

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 DON'T SHOOT PORTLAND, a)
4 nonprofit corporation in its)
individual capacity, et al.,)

5 Plaintiffs,) No. 3:20-cv-00917-HZ

6 vs.) October 21, 2020

7 CITY OF PORTLAND, a municipal) Portland, Oregon
8 corporation; MULTNOMAH COUNTY,)
a political subdivision of the)
State,)

9 Defendants.)

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16 **EVIDENTIARY HEARING**

17 **DAY 1**

18 TRANSCRIPT OF PROCEEDINGS

19 BEFORE THE HONORABLE MARCO A. HERNANDEZ

20 UNITED STATES DISTRICT COURT JUDGE
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APPEARANCES

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1 P R O C E E D I N G S

2 THE COURT: Good morning to ail of you. Please be
3 seated.

4 THE CLERK: Your Honor, we're here today for an
5 evidentiary hearing in the matter of Don't Shoot Portland
6 versus City of Portland, et al., Case No. 20-cv-917.

7 Counsel, please state your appearances, starting with
8 the plaintiff.

9 MR. BRUGGEMEIER: For the plaintiff, Franz
10 Bruggemeier, B-r-u-g-g-e-m-e-i-e-r.

11 MS. SAFARIAN: For the plaintiff, Viktoria Safarian,
12 S-a-f-a-r-i-a-n.

13 MR. MEGGITT: And for the plaintiff, Alex Meggitt,
14 M-e-g-g-i-t-t.

15 MR. MOEDE: And, Your Honor, Scott Moede, M-o-e-d-e,
16 for City of Portland.

17 MS. SHEFFIELD: Naomi Sheffield, S-h-e-f-f-i-e-l-d,
18 for City of Portland.

19 MR. YAMACHIKA: Robert Yamachika, Y-a-m-a-c-h-i-k-a,
20 for the City of Portland.

21 THE COURT: You all are a little crowded over there.
22 You might want to spread out. It's definitely not social
23 distancing. It's your safety and your nickel and dime, but
24 truly, maybe we can get you some other space to help you out
25 with all of this.

1 Who are you? You're in a mask over there.

2 MS. ALBIES: Your Honor, J. Ashlee Albies, also with
3 plaintiff, as is Maya Rinta.

4 And Jesse Merrithew will be here momentarily. And we
5 have Juan Chavez.

6 THE COURT: Oh, there you are, Juan. Okay.
7 Mr. Chavez.

8 Thank you, Ms. Albies.

9 And I didn't catch the name over here. I'm sorry.

10 MS. RINTA: Maya Rinta.

11 THE COURT: You have to use your outdoor voice.

12 MS. RINTA: Maya Rinta.

13 THE COURT: Rinta. Okay. Thank you.

14 And there is Mr. Merrithew.

15 MR. MERRITHEW: Hi, Your Honor. Apologies.

16 MR. JONES: And, Your Honor, if you can hear me, this
17 is Andrew Jones, appearing remotely on behalf of Multnomah
18 County.

19 THE COURT: Good morning, Mr. Jones. I can hear you.
20 Okay. So we're here on a contempt matter. The
21 plaintiffs have the burden of proof.

22 Have you all talked about how you're going to divide
23 up the workload here and what it's going to be? Can you
24 describe that for me, please.

25 MR. BRUGGEMEIER: Sure, Your Honor.

1 I'll be presenting the opening. The first witness
2 will be presented by Ms. Safarian, second witness by myself.
3 Subsequent three witnesses, I believe, are Mr. Meggitt. We
4 have another floater witness that might be stuffed in
5 somewhere that's going to be done by Ms. Safarian.

6 I will be handling the last witness and closing.

7 THE COURT: Okay.

8 How about over here?

9 MS. SHEFFIELD: I'll be handling the opening.

10 In terms of crossing their witnesses, I don't know
11 which order they came in. We've divided them up amongst
12 ourselves. I'm not sure which order, because I'm not sure
13 which order their witnesses are coming in.

14 And then for our witnesses, I will be doing direct
15 for Captain Passadore, who will be our first witness.
16 Mr. Moede will do the direct for Officer Taylor, who is our
17 second witness. Mr. Yamachika will do direct for Officer
18 Domka, who is our third witness. And I will do direct for
19 Lieutenant Cheney, who is our fourth witness. And any
20 closing, I'll do.

21 THE COURT: Thank you.

22 MR. BRUGGEMEIER: And, Your Honor, can I add that
23 Mr. Merrithew will be handling the cross for the police
24 officer witnesses.

25 THE COURT: All right. Thank you. I appreciate

1 that.

2 And, Mr. Jones, it sounds like you're an observer in
3 all of this.

4 MR. JONES: Yes, Your Honor. That is correct. I
5 will stay muted, unless you need me.

6 THE COURT: Okay.

7 And I've got to tell you, I'm just so nervous about
8 you all being too close to each other. If one of you wants to
9 make another spot or we can put another chair across here,
10 whatever you want so that you --

11 THE CLERK: I can have another table brought up.

12 THE COURT: You want to bring up another table?

13 You want us to bring up another table for you?

14 MR. YAMACHIKA: I'll sit at the end of the table.

15 THE COURT: Whatever you -- like I said, I'd like for
16 you to be safe.

17 And you can move anywhere you want. I mean, you
18 can't use the witness chair and you can't use my bench, but
19 other than that, just about anywhere you want.

20 MR. MOEDE: Your Honor, I'll also move down to the
21 end here.

22 THE COURT: And if you want, we'll try to find
23 another table for you to extend it out a little bit.

24 THE CLERK: I'll get someone, but they might
25 interrupt.

Opening Statement - Plaintiffs

1 THE COURT: That's fine. We'll try to do it between
2 witnesses or something like that.

3 Okay. So let's get to opening statements on the part
4 of the plaintiffs.

5 MR. BRUGGEMEIER: Thank you, Your Honor.

6 As you know, plaintiffs are asking the Court to find
7 that the City has violated this Court's order that partially
8 restricts certain munitions and weapons being used against
9 people participating in the ongoing protests against systemic
10 racism and police brutality that arose after George Floyd was
11 killed by police in Minnesota.

12 We're asking the Court to issue sanctions, to hold
13 defendants accountable for those violations, and prevent
14 future violations. You know, this Court has broad powers to
15 do that.

16 And the evidence that we will present and have
17 already presented to the Court will provide clear and
18 convincing evidence of the City's violations, both -- on
19 multiple occasions on June 30th.

20 Just a little bit about why we chose June 30th:
21 While we believe that the City has been violating the order
22 since the day this Court issued it on June 26th, we believe
23 that the Court probably didn't want to have a three-week
24 contempt hearing, where we would go through every instance
25 over the last -- what is that? -- almost four months now of

Opening Statement - Plaintiffs

1 the violations, constant and fairly brutal violations of this
2 Court's order.

3 June 30th presented the ability to have a pretty wide
4 variety of different violations, different munitions. It also
5 provided a pretty good representative sample of the violations
6 that we believe have been occurring since this Court issued
7 its order on June 26th.

8 Honestly, it also provides fairly good video coverage
9 of the different violations, and we could find declarants who
10 were there and experienced these violations and these uses of
11 force. And so we agreed with the City to rely on June 30th as
12 a representative sample of what people have seen on the
13 streets and the uses of force by police since then.

14 We will be presenting, most likely, seven witnesses
15 who will describe just their experiences on that day, so
16 starting with a gathering at Peninsula Park, a march to the
17 PPA building on Lombard, and then the subsequent police
18 actions in front of the building and on Lombard Street on that
19 night.

20 You'll hear from four witnesses who were impacted or
21 shot or had force used against them in violation of this
22 Court's order.

23 Mr. Cleinman, our first witness, will describe how he
24 was shoved with batons and then pepper sprayed within two
25 minutes of the police line moving east on Lombard, the first

Opening Statement - Plaintiffs

1 push of the dispersal.

2 Mr. Anglada will testify that he was shot multiple
3 times with impact munitions, in violation of this Court's
4 order, while he kicked a smoke canister away from himself and
5 towards the police line.

6 The Court will also hear from Ms. Haas, who was also
7 shot with impact munitions while trying to get a smoke
8 canister away from her.

9 Finally, the last person who was shot was
10 Mr. Greatwood. He is a livestreamer, who was shot towards the
11 end of the night, before the tear gas was used, when he was
12 bending down to pick up an inert munition that had just rolled
13 near him, to examine it.

14 The Court will also hear from other witnesses who
15 were there that night, who can provide the Court with an idea
16 of what it felt like to them, what they saw. Although they
17 weren't necessarily impacted by any violation of this Court's
18 order, they can describe what they saw that the Court could
19 see in the videos as violations of this Court's order and just
20 have a feel for what they were seeing.

21 I note that because the videos and the testimony
22 can't capture everything. They can't capture every use of
23 force, every violation of this Court's order. And so although
24 they might not be talking about any specific person that they
25 can point to and name being shot, they can talk about, you

Opening Statement - Plaintiffs

1 know, how many people they saw shot, how many people they saw
2 pepper sprayed, what the feel was.

3 An investigator working with the plaintiffs will also
4 testify and give context to video that the plaintiffs have had
5 produced that provides more context for the disparate pieces
6 of video that are already in the record.

7 This Court's order provides -- aims to provide
8 protection for people out in the streets against use of
9 weapons that would violate First and Fourth Amendment rights
10 of those people. They are out there demonstrating to change
11 policing in this city and put an end to the deadly and
12 severely damaging combination of racist policing and abusive
13 use of force. And they are met night after night with
14 excessive force, with abuses of force; and, from their
15 perspective, it is escalating.

16 And what we are doing is asking the Court to use its
17 contempt power to enforce its order and put a check on those
18 abuses and those violations of this Court's order so that, you
19 know, people -- people are demanding accountability. People
20 are demanding that the police force act in ways that are
21 professional and reasonable.

22 The Court's order limits impact munitions, aerosol
23 restraints, and rubber ball distraction devices or
24 flash-bangs; and it does so in a way that for at least impact
25 munitions and rubber ball distraction devices, it incorporates

Opening Statement - Plaintiffs

1 the PPB Directive 1010, Use of Force.

2 And so I say that because each of these violations
3 that the Court will see and that the plaintiffs are offering,
4 not only the ones that plaintiffs are specifically talking
5 about, but also the ones that the Court can see on its own,
6 reviewing the videos, there's layers.

7 So the first layer is -- well, the court order
8 incorporates the Use of Force Directive 1010. Use of Force
9 Directive 1010 incorporates the *Graham* reasonable -- objective
10 reasonability of the use of force standard.

11 And so each use of force has to be looked at for the
12 facts surrounding that individual, what the -- what the
13 officer was under the impression -- what the officer knew at
14 the time that they were using force. It must meet the Fourth
15 Amendment *Graham* standard. It must also be in line with the
16 uses of force that are allowed under the PPB Directive 1010,
17 which is to prevent or terminate the commission or attempted
18 commission of an offense, to lawfully take someone into
19 custody, and to -- as related to this, relevant to this, and
20 to defend the member or other person against the use of
21 physical force. That's a second bar.

22 The third bar is that each of the weapons used by PPB
23 has directives that explain how -- what the level of risk has
24 to be to be able to use those weapons against people. So that
25 third bar is -- for example, with impact munitions, it

Opening Statement - Plaintiffs

1 requires active aggression. Active aggression is a threat or
2 overt act of assault through physical or verbal means that
3 presents the ability to carry out the threat or assault, which
4 reasonably indicates an assault or injury to any person is
5 about to happen, unless intervention occurs, right?

6 So to use impact munitions, it has to meet the Fourth
7 Amendment standard, it has to meet the general use of force
8 lawful purpose standard. It has to meet this bar of active
9 aggression. And it also has to meet the specific terms of
10 this Court's order, which in, for example, impact munitions,
11 related to impact munitions, would require -- would require
12 the use -- this Court's order requires an additional bar of
13 not being able to use those impact weapons where people
14 engaged in passive resistance are likely to be subjected to
15 the force.

16 Under that order, each use of force has to meet all
17 of these bars. And if they don't, it's a violation of this
18 Court's order, because of all of those things incorporated
19 into the order. And so that's why, you know, at some points,
20 either on the witness -- the witnesses' explanations or the
21 questions asked or the argument may sound a little bit like an
22 excessive force Fourth Amendment argument is because that's
23 that first bar that has to be met to be able to use the force,
24 if that makes sense.

25 So the plaintiffs believe that these ongoing

Opening Statement - Plaintiffs

1 violations of this Court's order has eroded the public's trust
2 in the PPB to fairly and appropriately police the protests.
3 Directive 1010, the use of force directive, recognizes that
4 unreasonable use of force does erode the confidence of the
5 community and exposes both the police officers and the public
6 members -- members of the public who are present to
7 unnecessary danger.

8 Despite all of the uses of force, despite all of the
9 violations, there are still hundreds of people who come out
10 nearly every night to enact and try to push for the change
11 that they started with, to either defund the police, make
12 changes to the policy. And their activity, their protests,
13 trying to get more safety from PPB, has resulted in them being
14 at more risk for harmful action by PPB.

15 The police are hired to be professionals, employed by
16 the community, to ensure safety and to bring people lawfully
17 into the judicial system. What we're seeing in these
18 violations of the Court's order are extrajudicial punishment.
19 That's what it -- I mean, because of their use, because of
20 their prevalence, they are not being used in a way that meets
21 those Directive 1010 lawful uses of force. They're not to
22 effect an arrest. They're not in defense of someone's safety.
23 They are not -- they are not used to terminate an offense.

24 And, for example, the Court will hear about people
25 being shot and can see in the videos people being shot with

Opening Statement - Plaintiffs

1 impact munitions after they have already thrown something,
2 right. So if they're shot after someone throws something,
3 they are no longer at risk of assaulting someone. They've
4 already done the act. Unless they can show that those
5 circumstances say that -- or show that that person is about to
6 immediately engage in the same act, that use of force
7 rationale and lawful use of force is not met.

8 Defending someone for physical safety, again, the
9 thing has already been done. Shooting them after the fact is
10 just extrajudicial punishment.

11 It's also -- as we're going to see from the witnesses
12 and in the videos, these impact munitions and other weapons
13 are not used to effectuate an unlawful arrest. They are just
14 used after the fact.

15 So the plaintiffs are concerned that the violations
16 of this Court's order on June 30th and since then, and
17 actually prior to that, is -- demonstrates that PPB has lost
18 its sight of the lawful purposes of using force. This
19 Court -- we are asking the Court to end that escalation, end
20 that unaccountability, and hold the City accountable.

21 And we believe the evidence will show by clear and
22 convincing -- by the clear and convincing standard that
23 defendants have violated not only the witnesses' -- violated
24 the order not only for the witnesses, but throughout the
25 video, throughout the evening. And we ask the Court to issue

Opening Statement - Defendant City of Portland

1 sanctions to both hold accountable defendants and also prevent
2 future violations.

3 Thank you.

4 THE COURT: Thank you.

5 MS. SHEFFIELD: Good morning, Your Honor. Is it okay
6 if I sit down, so I'm a little closer to my mic?

7 Thanks.

8 Plaintiffs filed the --

9 THE COURT: Hang on just a second.

10 Would you mind if I gave you a paper mask, because
11 the cloth masks tend to muffle your --

12 MS. SHEFFIELD: I think Rob has an extra one. I can
13 try to switch up.

14 (There is a brief pause in the proceedings.)

15 MS. SHEFFIELD: Is that easier to hear?

16 Sorry. I think I probably picked my worst cloth
17 mask. I wasn't thinking this morning.

18 Plaintiffs filed the show cause motion alleging PPB
19 officers violated the less-lethal order on June 30th.
20 Plaintiffs now suggest that this really relates to a series of
21 violations that happened both before and after.

22 Plaintiffs, in their opening, suggest that the City
23 consented that June 30th was a representative sample. I don't
24 believe the City ever consented to June 30th being a
25 representative sample of uses of force. I think all uses of

Opening Statement - Defendant City of Portland

1 force are individual; and, as plaintiffs suggest in their
2 opening, require an evaluation of the totality of the
3 circumstances. So I don't think we can have a representative
4 sample of force uses.

5 But nonetheless, despite the fact that they brought
6 this motion as a violation of the less-lethal munitions order
7 from June 26th, plaintiffs obscure the incidents of violations
8 by repeatedly, in their motion and in the video compilation
9 that they'll show today, presenting evidence relating to PPB's
10 use of force that is not subject to that order. Their
11 briefing and their video focuses generally on use of force
12 rather than addressing the specific limitations set forth in
13 the June 26th less-lethal order.

14 The June 26th less-lethal order applies to impact
15 munitions, which for PPB are 40mm less-lethal launchers and
16 FN 303s. These are limited, as outlined in Directive 1010;
17 and then they are further limited so that PPB officers may not
18 use them where people who are engaged in passive resistance
19 are likely to be subjected to force.

20 Rubber ball distraction devices are similarly limited
21 by 1010, and then they're further limited to situations where
22 the lives or safety of the public or the police are at risk,
23 and they cannot be used to disperse a crowd where there is
24 little or no risk of injury.

25 Aerosol restraints, which are handheld OC spray or

Opening Statement - Defendant City of Portland

1 pepper spray, can't be used against persons who are engaged in
2 passive resistance, and officers must minimize the exposure to
3 non-targeted individuals. And it also applies to the LRAD,
4 but that's not at issue in this case. It can only be used for
5 announcements and not a warning signal.

6 And then it defines passive resistance, and it
7 defines passive resistance consistent with the definition that
8 is set forth in PPB's Directive 1010, which is an individual's
9 noncooperation with a member's order that does not involve
10 violence or active conduct by the individual.

11 The less-lethal order does not apply to baton
12 strikes, and it did not apply to pushing. It does not apply
13 to the use of smoke. It does not apply to dynamic movements
14 or what plaintiffs sometimes call bull rushes.

15 The less-lethal order does not apply to CS gas.
16 There is a temporary restraining order on the use of CS gas,
17 but that's not an issue here in this hearing.

18 In plaintiffs' video compilation, they'll show
19 incidents 1A, 1C, 1D, 2B. They'll show a bull rush, and
20 they'll show an incident called CS gas. And these are all
21 incidents related potentially to PPB's use of force, but force
22 that is not subject to the less-lethal order. And all of this
23 nonrelevant use of force just distracts from the relevant
24 questions, which are the specific uses of force that
25 plaintiffs believe violated the less-lethal order.

Opening Statement - Defendant City of Portland

1 And for those, their video and testimony today
2 present nine incidents. Eight of them are on the video, and
3 one is described by the testimony of Ms. Haas. And I'll go
4 through those so you'll have a sense of what they are.

5 Mr. Cleinman, as plaintiffs indicated, will testify
6 today. And in plaintiffs' video compilation, it will be
7 identified as incident 1B. And he's in the front of a line of
8 people that officers are trying to move east on Lombard. And
9 at some point that's not shown on the video, some pushing
10 occurs. And Mr. Cleinman grabs an officer's baton, and two
11 officers push him with their batons; again, pushes that are
12 not subject to the less-lethal order.

13 Mr. Middleton -- Officer Middleton witnesses that
14 pushing and baton grabbing, and then he also witnesses
15 Mr. Cleinman turn back around. And at that point Officer
16 Middleton, in his declaration, explained that he used pepper
17 spray in response to Mr. Cleinman's physical resistance.

18 The next two incidents are identified on plaintiffs'
19 video as incidents 1E and 1F. And those incidents are down
20 the line where Mr. Cleinman had pepper spray used against him.
21 And, again, protesters are not complying with the order to
22 move east. Instead, a large number of protesters are holding
23 a large banner that has some kind of piping along the top of
24 it, and they're blocking the officers' movement with that
25 banner. At some point, the officers try to pull the banner

Opening Statement - Defendant City of Portland

1 and piping away, and the protesters pull it back.

2 And you'll hear testimony today from Officer Taylor
3 that during this pushing and pulling with the banner, he
4 deployed two separate bursts of FN 303 rounds. First he
5 deployed at an individual who was wearing black that was
6 standing behind the banner and pulling on the piping.

7 And Officer Taylor will testify that he was concerned
8 that the individual was pulling that piping and was preparing
9 to use it as a weapon, and he deployed the FN 303 at the
10 individual's legs to prevent the use of that piping on top of
11 the banner as a weapon.

12 Officer Taylor will also testify regarding the use of
13 an FN 303 against an individual who was attempting to unarrest
14 somebody who other officers were trying to take into custody.

15 Plaintiffs will assert or have asserted in their
16 arguments that the FN 303 was used against an individual who
17 had fallen to the ground, but that's simply not correct.
18 There is no testimony from that individual. The individual
19 that fell to the ground was the individual who officers were
20 trying to arrest, and the FN 303 was used against another
21 individual standing behind that person, who was pulling them
22 away and trying to unarrest them. Officer Taylor used the
23 FN 303 on the individual pulling the person away.

24 He'll testify that he has witnessed throughout the
25 many months of protests, but even in June after one month of

Opening Statement - Defendant City of Portland

1 protests, numerous individuals engaging in unarrests that
2 create a dangerous situation that can often lead to injury to
3 officers and others, and he deployed the FN 303 to prevent the
4 risk of that injury.

5 Next, plaintiffs will show in the video an incident
6 identified as 2A, and that is an unknown officer deploying an
7 unspecified impact munition against an unknown target. The
8 only thing that is known is that the target is throwing
9 something at the police. It appears to be a water bottle, and
10 he's throwing it from a few yards away. Based on the video,
11 but because nobody else is identified and there's no
12 witnesses, it just appears from the video that the impact
13 munition was deployed to stop that individual from throwing
14 the object.

15 Next, as plaintiffs noted, in incident 2C on their
16 video compilation, Mr. Anglada, who will testify today, is
17 seen kicking a canister of smoke at a line of officers. He's
18 seen kicking it once and it not going all the way to the
19 officers and then running after it again to kick it a second
20 time to ensure that it gets all the way to the line of
21 officers. And it appears from the video that an officer
22 deployed a 40mm marking round to stop Mr. Anglada from kicking
23 the munitions at the officers.

24 Next, plaintiffs identify incident 3A in their video
25 compilation. And here it's difficult to tell from the video

Opening Statement - Defendant City of Portland

1 compilation, but there will be additional video that will be
2 seen through other witnesses. Protesters wheeled a large
3 dumpster into the middle of the road. The video will show,
4 consistent with the testimony that officers have submitted in
5 their declarations, that an individual approached the dumpster
6 with a lit object, apparently attempting to light the dumpster
7 on fire, and an impact munition is deployed to prevent the
8 person from lighting that fire.

9 Plaintiffs also identify the incident with
10 Mr. Greatwood, and it's incident 4A in their video
11 compilation. It is again difficult to see from the video, but
12 consistent with Mr. Greatwood's declaration and presumably his
13 testimony, he was reaching down to pick up a deployed
14 munition, and OSP trooper reports and PPB officer declarations
15 both describe using impact munitions in this situation,
16 because they have had numerous munitions picked up and thrown
17 back at them, creating a threat to their safety.

18 Similarly, incident 4B shows another person in
19 plaintiffs' video compilation. This person does not testify,
20 but they approach the officer line, leaving the protesters,
21 and they bend down and appear to pick up an object. And,
22 again, consistent with the previous activity that officers
23 experienced throughout the night, where individuals in the
24 crowd threw objects as well as spent munitions back at
25 officers, the Portland police declarations, as well as the

Opening Statement - Defendant City of Portland

1 reports from OSP troopers, do indicate that impact munitions
2 were used in this type of situation to prevent that person
3 from throwing the item back at their line.

4 And, finally, Ms. Haas testified in her declaration
5 that she was struck with an impact munition while attempting
6 to kick a munition, again, back at the Portland Police Bureau
7 and OSP line. And similar to Mr. Anglada, PPB officers and
8 OSP troopers did deploy munitions at individuals attempting to
9 kick and throw munitions back at them.

10 In addition to the video, there will be testimony,
11 and there's testimony in both declarations and there will be
12 some live testimony today from PPB officers. The record also
13 includes reports from OSP officers who deployed force that was
14 similar to that deployed by PPB officers.

15 Importantly, as plaintiffs note, the less-lethal
16 order largely obligates PPB to comply with Directive 1010.
17 You'll hear from Officer Domka, who will testify about how
18 PPB officers and RRT officers -- which are the Rapid Response
19 Team officers for PPB, and they respond to crowd control
20 events or crowd management events -- he'll describe how
21 they're trained on the use of both impact munitions and
22 aerosol restraints in compliance with Directive 1010.

23 In addition to the specific incidents, Captain
24 Passadore, who was the incident commander on June 30th, will
25 testify regarding the overall conditions and the situations

Opening Statement - Defendant City of Portland

1 that officers were responding to on that night. The situation
2 was dangerous. Plaintiffs often characterize it as a few
3 water bottles being thrown, but that's simply not all that was
4 happening. In the declarations by PPB officers and in the
5 police reports from OSP officers, 10 officers and troopers
6 describe being struck by objects, which included water
7 bottles, but also included rocks and full cans of beer.

8 And I'd like to show a short video in the record as
9 Exhibit B. Criminalist Nebling, in his declaration, provided
10 this video that he took. And he was struck by a rock in this
11 video, and I think really demonstrates that while water
12 bottles are very clear to see on video at night, rocks that
13 come in and hit officers, you can't actually see them flying
14 in. You only see that they hit someone.

15 So we'll play, briefly, Exhibit B, just so you can
16 understand kind of what that looks like from the police
17 perspective.

18 (A video is then played.)

19 MS. SHEFFIELD: And there's a picture of that rock in
20 the record.

21 But I think you see in the video water bottles
22 flying in, and you hear the criminalist get hit by the rock,
23 but at no point do you see the rock flying in, because on
24 these videos, darker objects like that aren't seen. But they
25 are being thrown. And the testimony of the officers and some

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1 of the video and reactions by the officers, you can see that
2 they are getting hit by things that are not just water
3 bottles.

4 The evidence that you'll see will show there were
5 specific uses of impact munitions and aerosol restraints. But
6 you'll also see the overall situations that the officers were
7 responding to, and it will demonstrate that the impact
8 munitions and aerosol restraints that plaintiff identify in
9 that list of nine were used not against people who were
10 engaged in passive resistance; they were used against
11 individuals who were engaged in physical resistance or active
12 aggression, individuals who were creating a threat to the
13 safety of officers.

14 I also would like to briefly address the role of OSP,
15 because plaintiffs in their reply ask this Court to hold PPB
16 responsible for the actions of OSP and to determine that OSP
17 was obligated to comply with the less-lethal order on
18 June 30th. Plaintiffs contend that OSP was either acting as
19 PPB's agent or was in active concert or participation with
20 PPB, but these assertions are made without reliance on the
21 factual relationship, the facts kind of underlying the
22 relationship between PPB and OSP. And the conclusion is
23 inconsistent with the case law.

24 So, first, the June 26th less-lethal order by its
25 terms applies to PPB. And other temporary restraining orders,

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1 including the Denver temporary restraining order, which this
2 Court relied on in considering the tear gas temporary
3 restraining order, have specifically bound police agencies
4 that provide assistance during protests. So it has
5 specifically called out other agencies that are not the agency
6 at issue.

7 And, in fact, plaintiffs in this case sued Multnomah
8 County because of their use of force at this protest separate
9 from PPB, despite knowing that Multnomah County and other
10 agencies, including OSP, were providing assistance, and the
11 less-lethal temporary restraining order that the parties
12 entered into only applied to the Portland Police Bureau.

13 And plaintiffs are correct that the City cannot avoid
14 its obligations under the order by, for instance, instructing
15 someone else to violate the order. And the Supreme Court has
16 said that defendants may not nullify a decree by carrying out
17 prohibited acts through aiders and abettors although they were
18 not parties to the original proceeding.

19 But at the same time, the order can't constrain
20 independent actions of a different party. And in that same
21 case, the Supreme Court says that "an injunction is not so
22 broad as to make punishable the conduct of persons who act
23 independently and whose rights have not been adjudged
24 according to law."

25 OSP's use of less-lethal munitions on June 30th were

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1 independent decisions, and their rights with respect to the
2 use of less-lethal munitions have not been judged by this
3 Court.

4 So plaintiffs' reliance on the cases regarding agency
5 are not applicable. The City doesn't assist OSP troopers in
6 using less-lethal munitions. The City does not direct OSP
7 troopers when to use those less-lethal munitions. The City
8 does not have authority over OSP troopers. Oregon State
9 Police is a statewide agency. They have authority throughout
10 the state, including in the city of Portland. So to the
11 extent that any of the uses of impact munitions were by OSP,
12 they cannot violate the less-lethal order.

13 With all the evidence that will come in today and the
14 evidence that's already in the record, the only question is
15 whether plaintiffs have proven by clear and convincing
16 evidence that PPB officers used less-lethal force on June 30th
17 that violated the less-lethal order. Plaintiffs' evidence
18 does not meet that high burden.

19 And the Supreme Court has specifically instructed
20 that civil contempt is not appropriate if there is a fair
21 ground of doubt as to the wrongfulness of defendants' conduct.
22 Here PPB officers' uses of force were based on good faith and
23 reasonable interpretations of the less-lethal order, and the
24 Court should not hold the City in contempt.

25 Thank you.

Cleinman - D

1 THE COURT: Thank you.

2 Call your witness.

3 THE CLERK: Raise your hand.

4

5 MATTHEW CLEINMAN

6 called as a witness in behalf of the Plaintiffs, having been
7 first duly sworn, is examined and testifies as follows:

8

9 THE CLERK: Please have a seat and state your name
10 and spell it.

11 THE WITNESS: My name is Matthew Cleinman,
12 M-a-t-t-h-e-w. Cleinman is C-l-e-i-n-m-a-n.

13 THE COURT: Mr. Cleinman, you can remove your mask
14 while you're testifying.

15 THE WITNESS: Thank you.

16 THE COURT: You may inquire.

17

18 DIRECT EXAMINATION

19 BY MS. SAFARIAN:

20 Q. Good morning, Mr. Cleinman.

21 What is your occupation?

22 A. These days I'm a software engineer.

23 Q. Mr. Cleinman, I want to turn to June 30th, 2020. Did you
24 participate in a protest that day?

25 A. Yes, I did.

Cleinman - D

1 Q. And where did you join the protest?

2 A. At Peninsula Park.

3 Q. Can you describe what was happening at Peninsula Park?

4 A. People were down there. People had signs. There were
5 some chants and -- yeah, people were mostly hanging out.

6 Q. What happened next?

7 A. People assembled in the street and started marching.

8 Q. And what was the destination of the march?

9 A. Ultimately we ended up at the building on Lombard, at the
10 Portland Police Association building, the police union
11 building.

12 Q. Did you observe the marching crowd doing anything other
13 than marching and chanting?

14 A. Just marching and chanting as we went.

15 Q. When you arrived at the PPA, did anything stand out to
16 you?

17 A. The building was ringed in officers in riot gear, just
18 fully -- fully ringed right around the building, which was
19 surprising, because I couldn't see any sort of private
20 building guarded in that sort of way by police forces.

21 Q. Prior to you and the crowd arriving at the PPA, had you
22 seen the crowd engage in any actions that seemed to you like
23 they endangered the safety or lives of those around you?

24 A. No, I did not.

25 Q. And what was the crowd at the PPA doing?

Cleinman - D

1 A. It was similar to the march. People were chanting all
2 different sorts of chants. People were holding signs. Some
3 people were just sort of at a distance, trying to look at the
4 police officers that were ringing the building, just to sort
5 of see what the meaning of their presence was, given
6 how -- how over the top it felt with the amount of gear they
7 had on and the weaponry they had.

8 Q. And where were you positioned in the crowd?

9 A. I was on Lombard Street, sort of in the -- the PPA
10 building is on the corner of Lombard and a side street, so I
11 was on Lombard, maybe half to two-thirds of the way down, sort
12 of directly in front of the building.

13 Q. At this point, Mr. Cleinman, we're going to show you and
14 the Court a short video and ask you if it illustrates your
15 testimony.

16 MS. SAFARIAN: Mr. Chavez, thank you for putting on
17 Exhibit 1, if you could please press play.

18 (A video is then played.)

19 BY MS. SAFARIAN: (continuing)

20 Q. Mr. Cleinman, does this video accurately depict the crowd
21 that you described gathered in front of the PPA?

22 A. Yes, it does.

23 Q. Mr. Cleinman, we heard an announcement being made to stop
24 throwing projectiles at the police.

25 From where you were standing in the middle of the

Cleinman - D

1 crowd, had you personally seen any projectiles thrown in the
2 direction of the officers?

3 A. I saw no projectiles thrown. I did see one or two plastic
4 water bottles, half full of water, land around the feet of
5 various officers. But given the quantity of the gear they
6 were wearing, I would hope that wouldn't hurt anybody.

7 Q. What happened next?

8 A. So there were announcements that I could hear being made,
9 potentially that one on the video being one of them, but I
10 couldn't hear the content of them over the chants of the crowd
11 from where I was. And eventually I did make out one
12 announcement and just heard the words "unlawful assembly" and
13 could make out -- make out those words.

14 And shortly after that, a stream of officers came
15 from the side street, sort of a single-file line, maybe 30 to
16 50 officers, and moved quickly in the other direction of
17 us -- from us, up Lombard Street.

18 Q. Okay. What happened next?

19 A. Those officers made a line across Lombard Street. So
20 there was, you know, officers, you know, roughly
21 shoulder -- not shoulder to shoulder, maybe a couple feet
22 apart, across the entire width of the road. And then they
23 started proceeding towards where the protesters were standing.

24 Q. Can you describe what you saw the officers lined up on
25 Lombard Street, what were they wearing?

Cleinman - D

1 A. They were wearing riot gear. They mostly had -- the ones
2 in front pretty much all had batons in their hands. Then
3 there were other officers behind them with other sorts of
4 weaponry.

5 Q. And when you say "riot gear," what does that appear like
6 to you?

7 A. It appeared helmets, armor, batons, something that looks
8 very aggressive, especially given the (unintelligible) --

9 THE COURT REPORTER: I'm sorry. I'm having trouble
10 understanding you. I need you to slow down.

11 THE WITNESS: Sorry about that. I'm slipping into
12 my -- I grew up right outside of Boston, and I'm slipping into
13 my Massachusetts way of speaking fast.

14 So the officers were holding batons. They had
15 helmets. They had, like, body armor on. And it seemed very
16 aggressive posturing for the crowd and what the crowd was
17 doing at that point.

18 BY MS. SAFARIAN: (continuing)

19 Q. So you were describing that the officers started
20 approaching. Can you describe what happened next?

21 A. Yes. The officers were approaching where we were, and
22 people were giving them space, and the crowd was slowly moving
23 backwards.

24 Q. What were you doing?

25 A. So as the officers got closer to where I was standing, I

Cleinman - D

1 noticed that one of the officers in the line, one of the
2 Portland Police Bureau officers, wasn't wearing any
3 identifying information.

4 And a few days prior or a week -- I'm not exactly
5 sure the timing, maybe a week prior -- Portland police allowed
6 their officers to stop wearing name tags and start wearing
7 numbers as an identifying feature. But the officer that was
8 directly in front of me was wearing neither.

9 And as somebody who is concerned about police
10 accountability, that -- the lack of numbers -- worried me.
11 And I pointed out to them, "You're not wearing any numbers,"
12 you know, "Where are your numbers?"

13 Q. Now, in terms of your body movements, as the police
14 officers approached the crowd, you described the crowd as
15 slowly moving backward. What were you physically doing?

16 A. Like the rest of the crowd, I was moving backwards, as the
17 crowd allowed.

18 Q. Mr. Cleinman, at this point we're going to show you City's
19 Exhibit J, and I'm going to ask you if this illustrates your
20 testimony.

21 (A video is then played.)

22 BY MS. SAFARIAN: (continuing)

23 Q. Mr. Cleinman, can you point yourself out in this video?

24 A. Yes. I am the person who is pointing at the officer
25 without numbers, directly -- you can see a black umbrella.

Cleinman - D

1 THE CLERK: You can write --

2 THE WITNESS: I can write? Thank you.

3 I am the person in the blue jeans, the green
4 backpack, and the gray sweatshirt right there (indicating).

5 MS. SAFARIAN: Thank you.

6 Mr. Chavez, if you could play just a little bit more.

7 (A video is then played.)

8 BY MS. SAFARIAN: (continuing)

9 Q. Mr. Cleinman, after this interaction with the officer,
10 where you asked for the badge number, what happened next?

11 A. The officer didn't respond to me, didn't acknowledge
12 anything that I had said. And shortly after that, the
13 officer stepped forward from their line to hit me with their
14 baton.

15 Q. Prior to that first push with the baton, what were you
16 physically doing in the moments prior?

17 A. I was with the group. I wasn't -- yeah, I was with the
18 crowd and pointing out the officer that didn't have numbers.

19 Q. After that first baton push, what happened next?

20 A. So there was a second baton push. So the first one went
21 directly pushing me backwards. The second one was in a
22 downward motion, sort of designed to strike me off balance, it
23 seems.

24 Q. And what happened after that?

25 A. After that I remember everything sort of going dark and a

Cleinman - D

1 whole lot of pain from -- from pepper spray.

2 Q. Mr. Cleinman, had you pushed back at the officer or
3 engaged in any fighting with the officers as this was
4 happening?

5 A. No, I did not engage in fighting the officers.

6 MS. SAFARIAN: At this point, Mr. Chavez, please play
7 Cleinman Exhibit 1.

8 (A video is then played.)

9 BY MS. SAFARIAN: (continuing)

10 Q. Mr. Cleinman, does that accurately depict your testimony
11 about the shove and the pepper spray?

12 A. Yes, it does.

13 MS. SAFARIAN: Mr. Chavez, can you rewind back and
14 play that again.

15 (A video is then played.)

16 BY MS. SAFARIAN: (continuing)

17 Q. Mr. Cleinman, as the officer -- the first push that you
18 experienced, can you please explain to us, what were you doing
19 with your arms and your hands?

20 A. Definitely.

21 So I had two pushes from that first officer. As I
22 described, the second push was in a downward motion and it
23 struck me off balance, and I was falling. And I, without
24 thinking about it -- when people are falling, they
25 instinctually try to stop that fall however they can. And I

Cleinman - D

1 have a distinct memory of, like, falling and then realizing I
2 had stopped falling and looking and seeing my hand around the
3 officer's baton, because I had prudently, instinctually
4 grabbed the only thing in front of me.

5 I remember as soon as I noted -- consciously
6 perceived that I stopped myself from falling by grabbing his
7 baton, I released the baton immediately, because my intent
8 wasn't to do anything to this officer. And I also remember
9 that the officer didn't seem bothered or struck off balance by
10 that momentary hold.

11 Q. And do you remember, out of the officers that were lined
12 up directly in front of you, could you tell by their uniforms
13 if they were OSP officers or Portland police?

14 A. I could. They were Portland police officers.

15 Q. And how could you tell?

16 A. Several ways, but most notably the badge on the side
17 of -- on the shoulder of their uniform saying "Portland Police
18 Bureau."

19 Q. Mr. Cleinman, can you describe the sensation you felt as
20 you are -- you described feeling disoriented, and we assume in
21 the video that corresponds with the pepper spray. What did
22 you feel as you were sprayed in the face?

23 A. It's similar, probably, to being in a car collision, if
24 anybody has been in that, where there is a sort of moment
25 where everything just goes blank. And then it's almost like

Cleinman - D

1 you are -- where you don't have any of your faculties, you
2 don't have any of your senses, and then they slowly come back
3 and you realize where you are and what you're doing.

4 So in my case, everything went blank. It was
5 painful. And then I, you know, could see a bit and realize
6 also -- you know, this is all over the course of a second, a
7 few seconds. But, you know, you realize, "Oh, I'm at a
8 protest." You remember that. And then you remember that you
9 just had some officer push you with a baton and that the
10 sensation or feeling is almost certainly some sort of chemical
11 munition.

12 And then the next realization is this probably isn't
13 a safe spot for me, if I just had an officer hitting me with a
14 baton and I know I don't have full -- full sensation of
15 my -- full understanding of my senses and I just got pepper
16 sprayed.

17 Q. What happened next?

18 A. People in the crowd guided me out to, like, a side street
19 to try to clean up, the best that I could, from the immediate
20 pepper spray impact.

21 MS. SAFARIAN: No further questions at this time.

22 THE COURT: Cross-exam.

23 MR. MOEDE: Yes.
24
25

Cleinman - X

CROSS-EXAMINATION

BY MR. MOEDE:

Q. Mr. Cleinman, over here. Scott Moede for the City of Portland.

So you'll agree with me that police made announcements over a loudspeaker, correct?

A. I -- I can say that only from the videos that I've seen, because all I heard was garbled over a loudspeaker, and I couldn't tell you for sure who made them.

Q. Well, wouldn't you agree with me -- we just watched a series of videos, and I would describe the loudspeaker as crystal clear. Would you agree with that?

A. My understanding is that the loudspeaker they used was (unintelligible) --

THE COURT REPORTER: Slow down, please.

"My understanding is that the loudspeaker they used was" --

THE WITNESS: Apologies.

-- a long-range acoustical device -- I might have the directing wrong -- or LRAD as it's commonly known.

My understanding is that that device is very directed in where the audio is. So it's highly possible that the video we saw was directly in the line of the LRAD, allowing it to be crystal clear there, but not in other parts of the crowd.

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1 BY MR. MOEDE: (continuing)

2 Q. Okay. But I want you to listen to my question, okay,
3 which is: The videos that we watched, the loudspeaker, the
4 LRAD was crystal clear in terms of being able to hear the
5 announcements, correct?

6 A. From where the video was positioned relative to the LRAD,
7 I agree, for the video -- the person making the video, it was
8 crystal clear.

9 Q. Okay. And you can hear repeatedly, "Move east. Move
10 east," I don't know how many times. It was just briefly on
11 there, but would you agree several times?

12 A. I would agree with that, yes.

13 Q. Okay. And wouldn't you agree that you did not leave the
14 street in response to that directive to move east?

15 A. I think you can see from the video that there is a large
16 crowd behind me. And in any large group, whether at a protest
17 or otherwise, one of my biggest concerns is crowd
18 (unintelligible) --

19 THE COURT REPORTER: "One of my biggest concerns is
20 crowd" -- I couldn't hear the word.

21 THE WITNESS: Apologies.

22 -- crowd panic, because that can be a very dangerous
23 situation, where a crowd is stampeding and people are getting
24 hurt. And so whether that's caused by the actions of the
25 crowd or the actions of the police, as I've seen many times,

Cleinman - X

1 I wouldn't want to push the people behind me to move any
2 quicker than they feel comfortable with, out of fear for the
3 safety of myself and everybody around me.

4 BY MR. MOEDE: (continuing)

5 Q. And I know you want to get your responses out, but I would
6 like you to listen to my question, okay, which is: You didn't
7 leave the street promptly after being told to move east,
8 correct?

9 A. I would say there wasn't a good avenue for me to move east
10 quickly.

11 Q. Okay. Well, we watched Exhibit J, and we can watch that
12 again. Would you agree with me, there's a moment in time
13 there's nobody around you within a handful of feet? You could
14 have simply turned and walked away.

15 A. We can watch the exhibit again if you'd like, but I -- you
16 know, I believe I was with the crowd and safest with the
17 crowd.

18 Q. Could you -- what was that? I didn't understand.

19 I mean, my question is: You could have just walked
20 away. The police were instructing you to move east, and you
21 didn't do it.

22 A. I also believe that the police disrupting -- the police
23 instructions -- and this isn't a matter for me, but a matter
24 for, you know, a court of law, similar to this one -- that an
25 unlawful assembly potentially would be a violation of the

Cleinman - X

1 First Amendment, of freedom of assembly.

2 So I will leave when instructed in some cases, but in
3 that case I was chanting in front of a building and -- yeah,
4 and I was happy with my actions.

5 Q. So what you're telling the Court is that you made your own
6 determination on what was legally appropriate in terms of your
7 response to the police?

8 A. I believed that my chanting on the street was okay, and I
9 was willing to keep doing that.

10 Q. All right. Let's switch topics.

11 While you're at the PPA building, some protesters
12 were throwing projectiles at police, correct? You even
13 admitted you saw at least two.

14 A. I testified that I saw two water bottles land that were
15 maybe a quarter to a half full, four to eight ounces of
16 material, yes.

17 Q. All right. And you've been to many protests, according to
18 your declaration filed in this case, correct?

19 A. Yes.

20 Q. And wouldn't you agree with me, while water bottles are
21 easy to see, things like rocks are not easy to see?

22 A. I think you can see from these videos that it was still
23 lots of daylight. This wasn't in the middle of the night, and
24 I would argue that anything would be easy to see at that
25 point.

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1 Q. All right. So at the very least, you'll agree some
2 protesters were not being peaceful, because throwing a water
3 bottle at police is not peaceful protest? Would you agree
4 with me on that?

5 A. I don't believe that there is a legal definition of
6 "peaceful protest," and I -- yeah, I think reasonable minds
7 might be able to disagree about a water bottle hitting near
8 your feet.

9 Q. Well, if it hits you in the head, that is a violent act,
10 correct?

11 A. I would say that those officers were all wearing helmets,
12 and it seemed an aggressive posturing by the police officers
13 from the moment we got there; and that if one is wearing a
14 helmet, a four-ounce water bottle hitting your head probably
15 isn't going to affect you that much.

16 Q. Okay. Have you read Ariel Livingston's declaration in
17 this case, where she was hit in the head with a water bottle?
18 She's a Portland police officer.

19 A. I did not, no.

20 Q. Okay. And she described her reactions in terms of getting
21 hit in the head and the pain she experienced. You're not
22 familiar with that?

23 A. I have not read that declaration, no.

24 Q. Are you aware that officers suffered injuries this day
25 from being not only struck in the head with a water bottle,

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1 but being hit with a fist-sized rock, struck in the arm, for
2 example? Were you aware of that?

3 A. I'm aware that after many nights of protests, Portland
4 Police Bureau puts out press releases with what they saw from
5 their events.

6 I also know that almost every night there's a
7 protest, there are injuries to protesters from the actions of
8 the Portland Police Bureau and that -- you know, I don't wish
9 any officers to get hurt, but (unintelligible) --

10 THE COURT REPORTER: I really need you to slow down
11 because I can't distinguish the words.

12 "I don't wish any officers to get hurt, but" --

13 THE WITNESS: -- but I'm unaware of any long-term
14 injuries from police officers or -- I'm sorry. I'm unaware of
15 any long-term injuries to police officers from the actions of
16 protesters, whereas I am very aware of many injuries that
17 protesters have received from officers that they're still
18 dealing with.

19 THE COURT: Mr. Cleinman --

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: -- most of the questions that Mr. Moede
22 is asking you can be answered "Yes" or "No."

23 THE WITNESS: Okay.

24 THE COURT: The way this works is if the lawyers on
25 this side decide they need further explanation, they will ask

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1 you, "Can you explain that answer?" And you will get an
2 opportunity to further fill in any answer that you give.

3 THE WITNESS: Okay. Thank you, Your Honor. It's my
4 first time here.

5 THE COURT: That's all right. No worries.

6 BY MR. MOEDE: (continuing)

7 Q. And so another thing I'm assuming you've seen is green
8 lasers pointed at police officers' eyes, correct?

9 I'm just asking, did you see that on June 30th?

10 A. I did not see that.

11 Q. Okay. Have you seen it other times?

12 A. I think by the night of June 30th, I think the answer is
13 probably no, but (unintelligible) June 30th.

14 Q. And would you agree with this, that the OSP officers that
15 were standing around the building also had full cans of beer
16 thrown at them and that they were struck by them?

17 A. I did not see that, no.

18 Q. Okay. How about glass bottles? Did you see glass bottles
19 being thrown at either OSP troopers or the Portland Police
20 Bureau?

21 A. No, I did not.

22 Q. All right. Let's talk about your actions prior to being
23 pepper sprayed.

24 MR. MOEDE: Ms. Warnock, could you play Cleinman
25 No. 1 in slow motion, please.

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1 (A video is then played.)

2 MR. MOEDE: Okay. Let's pause.

3 BY MR. MOEDE: (continuing)

4 Q. Now, from your vantage point, which is almost immediately
5 right here (indicating), you can clearly hear "Move east.
6 Move east," right?

7 A. Yes.

8 Q. Okay. So now we're agreed on that.

9 MR. MOEDE: So go ahead and keep playing, please.

10 (A video is then played.)

11 MR. MOEDE: Can you back up a little bit, and then
12 play this in slow motion, if you will, for the Court.

13 (A video is then played.)

14 MR. MOEDE: Let's stop.

15 BY MR. MOEDE: (continuing)

16 Q. And so your testimony there is that you agree that you
17 did, in fact, put your hands on the police officer's baton,
18 correct?

19 A. Hand, singular.

20 Q. Okay. And there is a tug-of-war there going on, correct?

21 A. As I said, my recollection is all of a sudden realizing
22 that my hand is on the baton and immediately, as soon as I
23 consciously perceived that, letting go of that.

24 Q. Okay. And --

25 A. And I -- apologies. I remember that very distinctly. You

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1 know, this was several months ago. And that is one of those
2 snapshot moments that is burned into my head of realizing that
3 my hand is on that baton and releasing it as quickly as
4 possible.

5 Q. And that, you indicated, is because you were falling down,
6 I believe was your testimony, correct?

7 A. Yes.

8 Q. Okay. Let's just play the video for the Court just one
9 more time.

10 (A video is then played.)

11 BY MR. MOEDE: (continuing)

12 Q. Would you agree with me at no point captured on the video
13 do you appear to be falling down?

14 A. So for me, one thing that's troublesome in trying to use
15 this video with my memory is you see my hand is to the right,
16 directly in the middle of this interaction. And so just like
17 I didn't testify about the second officer hitting me with
18 their baton, it's possible that that was after that second hit
19 that the camera panned.

20 Q. So you want us to believe that that video right there does
21 or does not capture you falling down? Because I think your
22 testimony was that you were falling down, which caused you to
23 reach out and grab the baton, correct?

24 A. Sensation of falling, yes.

25 Q. The sensation of falling. Okay.

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1 But wouldn't you agree with me that that video, which
2 is captured literally a couple of feet from you, does not show
3 you falling down?

4 A. With the caveat that that video does not show the entire
5 interaction, I would agree with that, yes.

6 Q. And wouldn't you agree that the police officers here are
7 trying to get you to move east, correct?

8 A. It seems clear, yes.

9 Q. Okay. And so we've gone through the grappling over the
10 baton.

11 MR. MOEDE: Ms. Warnock, can you continue the video
12 from that point.

13 (A video is then played.)

14 MR. MOEDE: Let's pause.

15 BY MR. MOEDE: (continuing)

16 Q. So now you've been pushed up towards the front. You
17 grabbed for the police officer's baton. At any of those
18 moments, you could have simply turned away and moved east.
19 Would you agree with that?

20 A. I would say that the video we just watched clearly
21 demonstrates, as the second officer comes forward to push with
22 their baton, that I am moving east and into the crowd. In
23 fact, the phrase you just said, "turned away," you can clearly
24 see that I am turned away before the pepper spray starts to
25 hit me.

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1 MR. MOEDE: Ms. Warnock, would you play that again,
2 please, one more time.

3 (A video is then played.)

4 BY MR. MOEDE: (continuing)

5 Q. So here you are at eight seconds, all right, and you're
6 pushed again. And would you agree, right there, you could
7 have just walked away, right?

8 A. I'm sorry. Are you saying from this moment right here?

9 Q. Sure.

10 A. I would argue that the -- or I would say -- apologies. I
11 would say that the video shows me not trying to move forward
12 at all before that pepper spray hits me. I would say we're in
13 agreement, because I was also trying to move away at that
14 moment in time.

15 Q. Okay. So now I want you to watch, and I want you to tell
16 me -- I perceive, watching this, that you now turn back
17 towards the police; and it's at that moment that you're pepper
18 sprayed.

19 MR. MOEDE: So let's just play that, Ms. Warnock,
20 please.

21 (A video is then played.)

22 BY MR. MOEDE: (continuing)

23 Q. Right there, did you see that?

24 A. Yes.

25 Q. Again, would you agree -- just let me finish the

Cleinman - ReD

1 question -- you turned your head from being pointed away from
2 the officers and now toward the officers, correct?

3 A. Yes.

4 Q. And it's at that moment that you're pepper sprayed,
5 correct?

6 A. The video seems to show that, yes.

7 Q. Okay.

8 MR. MOEDE: All right. I don't have any other
9 questions.

10 THE COURT: Redirect?

11 MS. SAFARIAN: Just briefly.

12

13 REDIRECT EXAMINATION

14 BY MS. SAFARIAN:

15 Q. Mr. Cleinman, how long was the crowd at the Portland
16 Police Association building before the announcement of
17 "unlawful assembly"?

18 A. My recollection is that we were outside for something like
19 10 to 15 minutes before the police line started to advance
20 towards us. And so within a few minutes, presumably, would be
21 those first garbled announcements.

22 Q. And you were questioned about how fast you were moving
23 east. How would you describe your movements east in relation
24 to the rest of the crowd?

25 A. I think I was moving with the crowd. I was certainly

Cleinman - ReD

1 towards the part of the crowd closer to the police, but I was
2 not -- I was moving with the crowd.

3 Q. And could you tell from your vantage point whether,
4 overall, your movement was east?

5 A. I'm sorry. Can you say that again?

6 Q. So you're testifying that the crowd was moving slowly
7 east.

8 A. Yes.

9 Q. When it comes to your own movements with the crowd, as the
10 police line was advancing on you and as they came closer and
11 closer, were you also moving east?

12 A. Yes, I was.

13 Q. So you were moving east at about the same rate as the rest
14 of the crowd, correct?

15 A. Correct, yes.

16 Q. And you testified that the reason for that was you were
17 afraid of moving more quickly because of the panic of the
18 crowd?

19 A. Correct, yes.

20 Q. I want to ask about your testimony about falling and just
21 clarify that.

22 At the moment where you testified you flung your arm
23 forward and grabbed the baton, do you remember actually
24 falling or do you remember losing your footing in that moment?

25 A. I remember losing my footing in that moment.

Cleinman - ReD

1 Q. Shortly after that, you were asked about moving your head
2 toward the officer. Why did you turn and look back at the
3 officers?

4 A. Are you talking about in the moment before I was pepper
5 sprayed?

6 Q. Yes.

7 A. I was trying to evaluate the situation. I was trying to
8 be aware of my surroundings. A police officer had just
9 baton'd me. I had no idea what sort of other violence they
10 were going to perpetrate. And so for my own safety, it was
11 important for me to know if they were coming back for me or
12 something else.

13 (There is a brief pause in the proceedings.)

14 THE COURT: Do you have any further questions?

15 MS. SAFARIAN: No further questions.

16 THE COURT: You may step down.

17 Do me a favor before you do that. Take the little
18 booty off the microphone and throw it away. There should be a
19 trash can there. Take a wipe and wipe down all the surfaces
20 in front of you and on the chair.

21 You don't need to worry about that one.

22 THE WITNESS: Thank you.

23 (Complies.)

24 THE COURT: Then you can throw the wipe away as well.

25 Thank you.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Let's take our mid-morning recess at this
3 time. We'll be in recess for 15 minutes.

4 Go ahead and step down.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you very much.

7 By the way, do you want this witness excused?

8 MS. SAFARIAN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MS. SHEFFIELD: No, Your Honor.

11 THE COURT: You are excused to go about your
12 business. Thank you.

13 We are in recess.

14 (A recess is then taken.)

15 THE COURT: Welcome back. Please be seated.

16 Call your next witness.

17 MR. BRUGGEMEIER: Plaintiff would call James
18 Comstock.

19 MR. MOEDE: And, Your Honor, after the witness is
20 sworn, I'd just like to state an objection on the record in
21 conformance with Ms. Sheffield's opening about relevance, and
22 so that then the plaintiff can just play their video the whole
23 way through as opposed to constant interruption.

24 THE COURT: Thank you.

25 All right. Please step forward and be sworn.

Comstock - D

1 THE CLERK: Go up here and take the stand.

2 Do you want to wipe it down and put on a fresh booty?

3 THE COURT: You might want to hit the microphone as
4 well if you're going to wipe it down.

5 THE WITNESS: How does one do that?

6 THE CLERK: There are wipes right there.

7 THE WITNESS: Hit the microphone, okay.

8 THE COURT: Not literally hit it.

9 (There is a brief pause in the proceedings.)

10 THE CLERK: Raise a hand.

11

12 JAMES COMSTOCK

13 called as a witness in behalf of the Plaintiffs, having been
14 first duly sworn, is examined and testifies as follows:

15

16 THE CLERK: Please have a seat. State your name and
17 spell it.

18 THE WITNESS: My name is James Comstock, J-a-m-e-s
19 C-o-m-s-t-o-c-k.

20 THE COURT: Mr. Comstock, you are going to be the
21 only person in this courtroom that can remove their mask while
22 testifying.

23 Thank you.

24 MR. MOEDE: Your Honor, may I put my objection on the
25 record?

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1 THE COURT: Yes.

2 MR. MOEDE: Your Honor, I'm using a wipe, and I'd
3 like to bring this up to you to illustrate the objection.

4 THE COURT: Me or to the witness?

5 MR. MOEDE: To you, Your Honor.

6 THE COURT: Do you know what it is?

7 MR. BRUGGEMEIER: I just saw it.

8 I just wanted to check in with Ms. Walker, if I could
9 have this back (indicating).

10 THE COURT REPORTER: Yes. Go ahead.

11 MR. BRUGGEMEIER: Thank you.

12 Sorry to interrupt.

13 THE COURT: That's okay.

14 MR. MOEDE: So, Your Honor, my understanding is that
15 Mr. Comstock is going to narrate a compilation video. And
16 Ms. Sheffield went through all of these incidents in opening
17 and highlighted during opening the items that we feel are not
18 relevant and not subject to the June 26th TRO.

19 So we just want to state on the record our objection
20 to 1A, 1C, 1D, 2B, what's labeled as "the bull rush" and
21 what's labeled as "the CS gas," as not relevant.

22 THE COURT: Thank you. Your objection is overruled.
23 You may proceed.

24 MR. BRUGGEMEIER: Thank you, Your Honor.
25

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DIRECT EXAMINATION

BY MR. BRUGGEMEIER:

Q. Mr. Comstock, how are you employed?

A. I'm a licensed investigator in Oregon. I have a business, (unintelligible) Legal Investigation, and I --

THE COURT REPORTER: Say the name of the business again.

THE WITNESS: Insight Legal Investigation.

And I independently --

THE COURT: Mr. Comstock, I don't know what it is about me, but when people get close to me like you are, they just want to talk really fast.

And so I'd like you to take a breath, relax, and pretend like you're just talking across the able to a loved one.

THE WITNESS: Very well. I'll do that, Your Honor.

THE COURT: Thank you.

THE WITNESS: I have my business, Insight Legal Investigation, and I contract with independent attorneys in Oregon to do legal investigation.

BY MR. BRUGGEMEIER: (continuing)

Q. Is that how you're involved in this litigation?

A. I am the lead investigator for the plaintiff in this case.

Q. Okay. What -- what kind of things have you done in that role as lead investigator?

Comstock - D

1 A. In this case particularly, I have been on site
2 investigating and observing protest activity in the city. I
3 have done investigation regarding the videos that have been
4 published to the Internet and have been disseminated
5 otherwise, of police and protest activity. And I've done
6 related research and investigation regarding implements used
7 by law enforcement and by protesters.

8 Q. So you said you have experience kind of on site. Can you
9 tell the Court a little bit about that, kind of how often
10 you've been out there, that kind of thing?

11 A. I began going out in a professional capacity to attend the
12 protests in early June. And over the course of two to three
13 months, I was out, conservatively, 25 times.

14 Q. Okay. And when you weren't out, would you follow and
15 track what happened at protests?

16 A. Yes. On the nights that I wasn't out when protest
17 activity was particularly active, I monitored the protest
18 activity through various livestreams and videos on the
19 Internet in realtime.

20 Q. Okay. And did you do either of those things on June 30th,
21 either going out or monitoring livestreams?

22 A. I did both. I was monitoring the livestreams for the
23 majority of that evening. Sometime between 10:00 and 11:00, I
24 actually went out on site.

25 Q. Okay. And you said that you also research videos and also

Comstock - D

1 kind of munitions and other investigations.

2 Are you familiar with the munitions that we're
3 talking about today, the FN 303s?

4 A. I am, the FN 303s and the 40mm munitions.

5 Q. Okay. And in your experience and in your investigation,
6 are you familiar with what those munitions look like, what
7 they sound like, and how they're used?

8 A. Yes. I've seen law enforcement use those munitions. I
9 have seen the munitions, after they're fired, on the ground.
10 I've seen people hit with the munitions, and I've seen
11 officers firing the munitions.

12 Q. Okay. And when you hear the different munitions, can you
13 tell them apart, the 40mm compared to the FN 303s?

14 A. Generally, yes, primarily because of the speed at which
15 they're fired.

16 Q. Okay. And have you, in your investigation -- you said
17 you've also done reviewing video, both on the Internet and the
18 videos in this case; is that correct?

19 A. That's correct.

20 Q. And have you reviewed -- well, I'll go back to another
21 one.

22 Are you familiar with the -- what I'll call the situ
23 or the model video?

24 A. I am.

25 Q. Okay. Can you tell the Court a little bit about what that

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1 is?

2 A. So the situ video is a model that combines contextual
3 information for the location with actual videos that were
4 taken in those locations to give context to what was the
5 landscape, for lack of a better word, around where the video
6 was taken. This was done by creating a point cloud scan and
7 photogrammetry of the area, not at the time of the protest,
8 but after.

9 Q. Can you just really briefly explain what the point cloud
10 is and the -- I don't know even know the other word --
11 photogrammetry (ph)?

12 A. Photogrammetry.

13 Q. Okay.

14 A. A point cloud scan, as I understand it and my experience
15 with it, is a laser scan that measures, frankly, millions and
16 millions of tiny points of measurement from the scanner to a
17 different object. Those points are uploaded into a computer
18 program to create what is basically a model based on
19 measurement, to show the three-dimensional rendering of an
20 area.

21 Photogrammetry is similar, in that thousands of
22 photos are taken and stitched together in a computer to make
23 something very similar to what you'd see in the street view in
24 Google maps.

25 Q. Okay. So you're familiar with the situ video. Are you

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1 familiar otherwise with the videos that make up that situ
2 video?

3 A. I am.

4 Q. And are you aware -- do you believe they are already
5 exhibits in the record?

6 A. My understanding is that they are exhibits in the record
7 in this case.

8 MR. BRUGGEMEIER: Your Honor, we'll have Mr. Chavez
9 play the situ video. I'll ask Mr. Chavez to stop it
10 periodically for Mr. Comstock to give us a little bit of extra
11 context to what we're about to see and have seen.

12 THE COURT: That's fine.

13 MR. BRUGGEMEIER: Okay. Thank you.

14 (A video is then played.)

15 MR. BRUGGEMEIER: So if you'll pause it real quick,
16 Mr. Chavez.

17 BY MR. BRUGGEMEIER: (continuing)

18 Q. Just as a very -- just the beginning, Mr. Comstock, can
19 you just tell us kind of what we're looking at here?

20 A. We're about to see a preview of each of the incidents
21 outlined in the situ video. We're going to see a timeline
22 that will run, and then we'll see on the map here the
23 position of police and protesters, represented by a blue mark
24 for the police and a yellow mark for the protesters. You'll
25 see the movement as they move together and apart and down the

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1 street. You'll see the incidents labeled as they come up in
2 time.

3 And so this goes through all the videos from a bird's
4 eye view on a timeline before we start looking at the actual
5 videos.

6 Q. Perfect. Thank you.

7 MR. BRUGGEMEIER: Go ahead, Mr. Chavez.

8 BY MR. BRUGGEMEIER: (continuing)

9 Q. So the bottom is a time of day marker; is that right?

10 A. That's correct.

11 Q. And yellow is the protesters, blue is the police. Okay.

12 (A video is then played.)

13 BY MR. BRUGGEMEIER: (continuing)

14 Q. Now, we're seeing incidents labeled. Can you tell us
15 briefly kind of -- are those individual acts? Are there other
16 things that make up each labeled incident? What are those
17 labels?

18 A. They are collections of activities in each cluster, a
19 cluster in each incident. Some incidents have more, some have
20 less. But, generally, there is more than one thing happening
21 in each incident.

22 Q. So it's a marker of kind of time and place. Incident 1
23 took place here at around this time; is that accurate?

24 A. That's correct.

25 Q. Okay.

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1 MR. BRUGGEMEIER: Are we still going, Mr. Chavez?

2 (A video is then played.)

3 BY MR. BRUGGEMEIER: (continuing)

4 Q. So this is incident 1; is that right?

5 A. That's correct.

6 Q. And what are we looking at here?

7 A. In incident 1 here, we're looking from a balcony view,
8 where the person is filming. We have the -- the police line
9 has come out near the Portland Police Association building, as
10 facing the protesters.

11 And what we are about to see is a confrontation and
12 interaction between protesters and police, generally
13 surrounding an area where a banner is being held.

14 I know from Exhibit J, which depicts the same thing,
15 but is not included in the situ video, the banner says
16 "Abolish the PPB." And there's an interaction there. You can
17 hear, when we turn the audio on -- there's going to be audio
18 on this -- the LRAD directing the crowd to move east.

19 And then we're going to see interaction with the
20 police and Mr. Cleinman, who is a declarant, who I believe has
21 testified in this case. We're going to see the video of the
22 same incident, but from different vantage points. We start
23 here up on the balcony, but we switch at one point to a view
24 down by the street. So we will see something, rewind a little
25 bit in time, and see the same thing again from another vantage

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1 point.

2 We will see from the vantage point down the street,
3 the faces of some of the people are blurred. They came that
4 way in the upload when this was collected from the Internet.
5 The person who uploaded them had blurred their faces.

6 Mr. Cleinman, as I believe he's already testified, is
7 in a gray sweatshirt. And we see him struck with a baton. He
8 reacts to that strike, and then he is sprayed.

9 Q. And you said there are a couple of sub incidents that
10 we'll see also?

11 A. That's correct.

12 There is a person -- there are various things
13 happening at the same time, but in particular there is a
14 person on roller skates who is kind of holding on to the
15 banner and interacting with the police.

16 I know from Exhibit J, that gives actually more
17 context to that, officers pulling back on that person's
18 backpack as they're -- I believe they kind of put their hand
19 on it or push it little bit forward, then pull back and are
20 pulled to the ground. And you can see that person from this
21 vantage point in this as well.

22 The banner actually comes apart as the police pull on
23 it, I believe in this same section of video.

24 MR. BRUGGEMEIER: Mr. Chavez, go ahead and play that,
25 please.

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1 (A video is then played.)

2 BY MR. BRUGGEMEIER: (continuing)

3 Q. So that circle is the first thing that we're going to see;
4 is that right?

5 A. That's the area where Mr. Cleinman is, yes.

6 Q. Okay.

7 (A video is then played.)

8 MR. BRUGGEMEIER: If you'll pause it, Mr. Chavez,
9 please.

10 BY MR. BRUGGEMEIER: (continuing)

11 Q. So the weapon that we're seeing being shot here, can you
12 identify what that is?

13 A. Yes. That, in my experience and in investigation of this,
14 is an FN 303 munition.

15 Q. Okay. Now, we received a City exhibit yesterday, if I can
16 show it to you.

17 MR. BRUGGEMEIER: Do you mind if I walk forward a
18 little bit?

19 BY MR. BRUGGEMEIER: (continuing)

20 Q. (Handing) Is this what you believe to be an FN 303
21 munition?

22 A. That is what I've seen on the ground after those weapons
23 are fired, yes. That is similar to what I would understand to
24 be an FN 303 munition.

25 MR. BRUGGEMEIER: Your Honor is familiar with this?

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1 THE COURT: No. I have not seen that.

2 MR. YAMACHIKA: I've got an extra copy.

3 THE WITNESS: Can I clarify my answer on that?

4 THE COURT: Yes. You can always clarify.

5 THE WITNESS: That is one example. I have seen
6 various different examples that are similar of the FN 303, but
7 some of them look slightly different, as they may have
8 irritant powder or paint in them.

9 So they don't all look exactly the same, but they are
10 all in that general style. They all have the fins on them,
11 which I understand are for rifling, for -- to make it spin.
12 And they all have the -- it's a metal shot, like a bismuth
13 shot, I believe, inside.

14 BY MR. BRUGGEMEIER: (continuing)

15 Q. And that's what we're seeing in the kind of clear dome in
16 the front of it; is that right?

17 A. That's right. The ones I found on the ground and
18 examined, that's what they have.

19 Q. Okay. And are you familiar, in your reviewing the videos
20 and in your investigation, of who this officer is who is
21 shooting right here?

22 A. From Exhibit J, yes. This is the officer who is labeled
23 on his helmet No. 12. And my understanding from my
24 investigation is that that is Brent Taylor.

25 MR. BRUGGEMEIER: Mr. Chavez, play it, please.

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1 (A video is then played.)

2 MR. BRUGGEMEIER: I wonder if we can pause it and see
3 if we can get rid of that stutter.

4 (A video is then played.)

5 MR. BRUGGEMEIER: You should be able to click on the
6 bottom where it's incident 2, or just forward it. That's
7 fine.

8 BY MR. BRUGGEMEIER: (continuing)

9 Q. So, Mr. Comstock, can you explain, just very briefly, kind
10 of what happened between incident 1 and incident 2?

11 A. So incident 2 occurs a few minutes after incident 1. We
12 start again with the video from the balcony. We're going to
13 see some impact munitions fired at a person who attempted to
14 throw a bottle. We're going to see a grenade thrown into the
15 crowd of people who are moving --

16 MR. MOEDE: Objection to the term "grenade."

17 THE COURT: Overruled.

18 THE WITNESS: We're going to see another
19 gentleman -- well, I should correct that -- another person. I
20 don't know if it's a man or a woman or what pronoun to use
21 with that person. But we're going to see shots fired, impact
22 munitions, at a person who appears to kick a smoke grenade,
23 who I believe is the declarant Pedro Anglada.

24 BY MR. BRUGGEMEIER: (continuing)

25 Q. In that first one, you said there is a bottle thrown. Can

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1 you tell where that bottle lands?

2 A. Yes. If you watch carefully as this is played, you'll see
3 this person go back to throw the bottle. And they do
4 accomplish throwing the bottle to an extent, but it seems to
5 be kind of an aborted attempt. Either they lose their nerve
6 or it slips in their hand, because it falls short in an area
7 in front of the officers. It's not a full throw.

8 Q. Okay. Thank you.

9 MR. BRUGGEMEIER: Go ahead, Mr. Chavez.

10 (A video is then played.)

11 MR. BRUGGEMEIER: Your Honor, we're going to try to
12 reopen the video to try to get rid of that stutter, for the
13 sound.

14 (A video is then played.)

15 BY MR. BRUGGEMEIER: (continuing)

16 Q. Mr. Comstock, in reviewing that and knowing what you know
17 about the sounds of weapons, can you describe at what point
18 the weapons are fired and what you believe the weapon is?

19 A. After the bottle is thrown, you hear a sound of a weapon
20 firing, which I believe to be the FN 303, based on the rapid
21 fire. The 40mm munitions that are used are not fired so
22 rapidly.

23 Q. Okay. Is that that kind of repeated soft pop that we're
24 hearing?

25 A. That's correct.

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1 Q. Thank you.

2 MR. BRUGGEMEIER: Mr. Chavez?

3 (A video is then played.)

4 MR. BRUGGEMEIER: Can you pause it, please,
5 Mr. Chavez.

6 BY MR. BRUGGEMEIER: (continuing)

7 Q. Mr. Comstock, can you tell us what this red line is?

8 A. So this red line tracks the path of the person who is on
9 the receiving end of the explosive device that -- that fell.
10 The device, which I called a grenade, landed at the person's
11 feet.

12 This tracks where that person was as the commands to
13 move east were given and the movement of that person in
14 compliance with the command, until the point where the
15 explosive device landed at their feet and exploded.

16 Q. Thank you.

17 MR. BRUGGEMEIER: Mr. Chavez?

18 (A video is then played.)

19 BY MR. BRUGGEMEIER: (continuing)

20 Q. Mr. Comstock, what was the last one we saw?

21 A. So that was a person who appeared to throw a smoke
22 canister.

23 Q. Did he -- did he throw it or did he do something else with
24 it?

25 A. Or he kicked it, rather, would be a better term, yeah.

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1 Q. And when you say "smoke canister," how are you sure that
2 that is smoke and not some other gas or tear gas or something
3 else?

4 A. I'm not sure, other than the reports that I have
5 from -- that I've read from the declarations from the police
6 and from protesters. My understanding is that -- I actually
7 have a note at the time that CS gas wasn't deployed or noticed
8 by anyone until about 10:13 p.m. This is before that, so I
9 believe that to be a smoke canister, based on those
10 declarations.

11 Q. So you're saying that you believe that any kind of cloud
12 munition that we're seeing is smoke until 10:13?

13 A. That's correct.

14 Q. Okay.

15 A. Well, let me clarify that. Any of the cloud like, smoke
16 like -- there are sprays, which are different, but any kind of
17 a smoke-like cloud, I don't believe that to be CS.

18 Q. Okay. Thank you for that distinction.

19 MR. BRUGGEMEIER: Go ahead, Mr. Chavez.

20 (A video is then played.)

21 BY MR. BRUGGEMEIER: (continuing)

22 Q. And, Mr. Comstock, is there something that happened right
23 at the end of that video that you didn't talk about yet?

24 A. Could we see that again?

25 Well, yes, I do recall. So the person who -- I

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1 believe the person -- the person who was tackled at that time,
2 if you run that back a bit --

3 (A video is then played.)

4 MR. BRUGGEMEIER: Mr. Chavez, can you pause that,
5 please.

6 BY MR. BRUGGEMEIER: (continuing)

7 Q. So we see those two triangular marks move apart. Can you
8 explain kind of what happened in that time?

9 A. Yes. In the time period between the end of incident 2 and
10 what we've labeled incident 3 here, the police have pushed
11 forward a little bit than incident 2 and then moved back
12 towards the Portland Police Association building.

13 And the protesters have retreated and then moved
14 back, but not particularly close to where the line of police
15 are, and have placed a line of dumpsters and I believe a
16 garbage can in the road. And there's a large gap between the
17 protesters and the line of police officers.

18 Q. What are we going to see in incident 3, just briefly?

19 A. So in incident 3, we're going to see munitions fired
20 again. We're going to see two videos of that. The first
21 video will show where the rounds came from. The second video
22 will show where they strike. You can notice from a puff of
23 smoke where those munitions are landing. And we'll see a
24 measurement of distance to show that this is from the -- where
25 the weapon was fired and where the impact landed.

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1 Q. And that distance was created in this kind of point cloud
2 of millions and millions of points --

3 A. Right.

4 Q. -- creating this model?

5 A. That's right. The purpose of the point cloud is primarily
6 one of measurement, but it does work for visuals, and so
7 that's exactly what they were able to do with this.

8 Q. Okay. Thank you.

9 MR. BRUGGEMEIER: Mr. Chavez.

10 (A video is then played.)

11 THE WITNESS: With the choppy audio, it's difficult
12 to hear, but the person filming does mention the munitions
13 there.

14 BY MR. BRUGGEMEIER: (continuing)

15 Q. Okay. And the next thing we're going to see, very
16 briefly, is what?

17 A. This is what is commonly called here a bull rush. This is
18 video again from Robert Evans. At this point the crowd has
19 been pushed about half a block to the east. The announcements
20 from the LRAD have stopped.

21 We have a brief view that we're going to switch to,
22 to see behind -- a view from behind the police line. And then
23 we're going to see a balcony view, where the police are about
24 20 feet away from the protesters.

25 The police at this point have pushed past that line

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1 of dumpsters and the garbage can that was formed earlier. And
2 suddenly there is a rush of police on to the crowd of
3 protesters. And the people are bunched up against each other.
4 Cars behind the crowd are stopped there, and people are pushed
5 up against that.

6 Q. Thank you.

7 MR. BRUGGEMEIER: Mr. Chavez.

8 (A video is then played.)

9 BY MR. BRUGGEMEIER: (continuing)

10 Q. Just very briefly, what happens between the bull rush and
11 incident 4, and what are we going to see in incident 4?

12 A. In incident 4, the crowd has been pushed further east.
13 The police line has stopped. The crowd has stopped.

14 We're going to start by seeing some explosive
15 devices, which I would call grenades, thrown into the crowd.
16 And we'll see a graphic. A blue line will show up in this.
17 That shows the position, because at this time of night it's a
18 little bit darker; the video isn't quite as clear. You can
19 see where the line of police are. And we'll see the distance
20 between the person filming here and the police line.

21 And then we can stop there or we can go on.

22 Q. We can stop there, yeah.

23 A. Okay.

24 MR. BRUGGEMEIER: Mr. Chavez, please.

25 (A video is then played.)

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1 BY MR. BRUGGEMEIER: (continuing)

2 Q. So we saw what you're calling grenades. Now we're seeing
3 the police line in relation to Greatwood.

4 MR. BRUGGEMEIER: Mr. Chavez, can you pause that for
5 a second.

6 BY MR. BRUGGEMEIER: (continuing)

7 Q. Can you tell us what Greatwood means?

8 A. Greatwood is the name of the person filming and one of the
9 declarants in this case. You'll notice in the -- the
10 perspective of this filming is a little bit different. It's
11 up high. Mr. Greatwood is kind of unique and identifiable in
12 the protest beat because he films on a 20-foot painter pole
13 with a camera up on top to give a higher perspective.

14 And he, at this point in the protest, certainly in
15 the months of June and July, was a fixture. He had a sign
16 that said "Veterans For Peace" that he would wear. He was
17 very -- very recognizable with that giant painter pole.

18 So this is -- this is his filming. We're going to
19 see the interaction with the police and -- and with him.

20 MR. BRUGGEMEIER: Mr. Chavez.

21 (A video is then played.)

22 BY MR. BRUGGEMEIER: (continuing)

23 Q. So we see the camera turn. Are you aware of why the
24 camera turns?

25 MR. MOEDE: Objection, foundation.

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1 THE COURT: Overruled.

2 You can answer the question.

3 THE WITNESS: Yes. At this point -- and it becomes
4 more clear in the audio, although with the chop, I'm not sure
5 how well we'll hear it here -- Mr. Greatwood is shot with a
6 very large munition in -- in the genitalia.

7 BY MR. BRUGGEMEIER: (continuing)

8 Q. And how do you know that?

9 A. I took Mr. Greatwood's declaration. I interviewed him.

10 Q. Thank you.

11 MR. BRUGGEMEIER: Mr. Chavez.

12 (A video is then played.)

13 MR. BRUGGEMEIER: Would you mind restarting that.

14 THE WITNESS: The audio in this part, it would be
15 good if we could hear that.

16 (A video is then played.)

17 BY MR. BRUGGEMEIER: (continuing)

18 Q. So you could -- when it's not choppy and it's turned up,
19 you can hear him groaning; is that right?

20 A. Yes, you can hear -- kind of against the background of the
21 other ambient noise, you can pretty clearly hear -- it's
22 rather quiet, because the microphone is 20 feet above him, but
23 he's making noises like, "Oh, oh," and then you can hear him
24 say certain words, referring to where he was hit.

25 Q. And then we saw, like, a fast-forward. Can you explain

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1 what that is and what we're about to see next?

2 A. So in that fast-forward time, Mr. Greatwood
3 has -- according to his declaration and his description of
4 what happened, has, at one point, handed the pole with the
5 camera off to someone near him. And then at one point it is
6 placed against the wall and it is kind of stayed, and we can
7 see the movement at that point.

8 We're going to see a person, after that fast-forward,
9 a person who is going to walk in front of the line and bend
10 down to look at a canister, a smoke canister of some sort on
11 the ground, and that person is shot with impact munitions.

12 Q. Thank you.

13 MR. BRUGGEMEIER: Mr. Chavez.

14 (A video is then played.)

15 BY MR. BRUGGEMEIER: (continuing)

16 Q. So we hear those pops. What do you believe that those
17 pops are?

18 A. The rapid-fire nature of the sound is consistent with the
19 FN 303 munition being fired.

20 Q. Thank you.

21 And what's the final thing we're about to see?

22 A. So the last thing we're going to see, we're going to start
23 with a view from the balcony again, from a balcony, and we're
24 going to see CS gas shot from the police line. We're going to
25 see CS gas canisters fall back, far back into the crowd, and

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1 the crowd will be pushed through the tear gas.

2 Q. Thank you.

3 A. We'll also hear the reaction of the crowd to the tear gas.
4 It's a significant difference to, as we talked about earlier,
5 the other smoke canisters. The reaction of the crowd is quite
6 obvious.

7 Q. Thank you.

8 MR. BRUGGEMEIER: Mr. Chavez.

9 (A video is then played.)

10 BY MR. BRUGGEMEIER: (continuing)

11 Q. And just as a last point, can you explain what happens
12 after? So this ends at 10:30, it looks like. Can you explain
13 what happens to the crowd and the police movement after this
14 point?

15 A. So this is around the point, right after this, when I
16 arrived. And the crowd was pushed by the police down Lombard,
17 east toward the area of Mississippi and Albina. And that's my
18 understanding of when Mr. Anglada was shot in the face with
19 the munitions. He's one of the declarants in this case.

20 Q. And that's when you were there, seeing the motion of the
21 crowd and the police?

22 A. That's right.

23 Q. Thank you, Mr. Comstock. I don't have any more questions.

24 THE COURT: Cross-exam?

25 MR. MOEDE: Yes, Your Honor.

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CROSS-EXAMINATION

BY MR. MOEDE:

Q. Scott Moede for the City of Portland. I've got a few questions for you.

So you indicated you have familiarity with weapons systems, kind of based on your attendance at the protests since May and then your observations. But you're referring to one of the munitions as a grenade, correct?

A. I did refer to one of those munitions as a grenade, that's right.

Q. And there is a huge difference between a military grenade and what is actually being deployed in these videos, correct?

That's the question. There's a big difference between a grenade, right, in the military sense, and what's simply deployed in the video, correct?

A. Yes.

Q. Okay. And, really, we're not talking about a military grenade. What we're talking about is smoke, right? And the munition is called a Triple-Chaser, correct?

A. Not exclusively, no.

Q. Okay. But that's one of them, correct?

A. That is one.

Q. Okay. And there are others that can be hand tossed, rolled on the ground towards protesters, and it creates an obscurant, correct?

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1 A. Some of which, yes.

2 Q. Okay. And would you agree with me that smoke is not part
3 of the June 26th TRO order, correct?

4 A. I'm not -- I don't know that.

5 Q. Okay. So it's your testimony you're not familiar at all
6 with the June 26th order?

7 A. It is not my testimony that I am not familiar at all.

8 Q. Okay. So you have some familiarity?

9 A. I have some familiarity.

10 Q. Okay. But would you agree with me that baton
11 strikes -- you've also referred to that as a bull rush. Would
12 it surprise you that that's called a dynamic movement by the
13 police?

14 A. It wouldn't surprise me if the police called it that.

15 Q. Okay. That's not part of the TRO order from June 26th,
16 2020, correct?

17 A. I'm not aware one way or the other.

18 Q. Okay. So you testified about your familiarity with the
19 FN 303, and that's carried by the Portland Police Bureau,
20 correct?

21 A. I don't know who exclusively carries it. I have seen the
22 FN 303 carried by Portland Police Bureau members, yes.

23 Q. Okay. And I think you mentioned that you're generally
24 familiar with the sounds of what an FN 303 sounds like,
25 correct?

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1 A. Yes.

2 Q. Okay. Doesn't the -- the OSP troopers have a similar
3 munition, correct?

4 A. They may.

5 Q. Okay. They call it pepper balls, correct?

6 A. I am familiar with the pepper ball weapons.

7 Q. And don't those sound very similar, pepper ball weapons
8 and FN 303s; that is, that rapid, you know -- like a paintball
9 gun, correct?

10 A. I would hold that in my experience out there, I can tell
11 the difference.

12 Q. You say that you can tell the difference?

13 A. In the sound and by seeing them, yes.

14 Q. Okay. Well, you don't have any special police training,
15 correct?

16 A. No.

17 Q. Ever conducted any studies about the -- sound studies
18 about the differences between pepper balls and FN 303s?

19 A. I have been on the ground when both were used, and I've
20 heard both being used.

21 Q. And I understand that. The question is: Have you
22 conducted any studies or anything like that?

23 A. I guess we could bicker about terms. I would say I've
24 conducted investigation about it. That's what I was doing
25 when I heard them.

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1 Q. All right. So you talked about Mr. Greatwood, correct?

2 A. Yes.

3 Q. Okay. And you indicated that you interviewed him; is that
4 right?

5 A. I did.

6 Q. Okay. And one of the things he indicated is that prior to
7 being struck by a munition, that he had bent down to pick up a
8 munition on the ground, correct?

9 A. I don't believe he said a munition. But yes, he did bend
10 down to pick up something that had been deployed by law
11 enforcement onto the ground.

12 Q. Okay. In his declaration, I didn't see any notation about
13 what the color of the impact area was on Mr. Greatwood's
14 pants, correct?

15 A. Mr. Greatwood's pants were bloody.

16 Q. But he's wearing pants, correct?

17 A. He was wearing pants.

18 Q. Okay. And these munitions that are fired, some of them
19 have color, don't they?

20 A. Some do.

21 Q. Okay. And some of it is pink, correct?

22 A. I have seen it in a variety of colors.

23 Q. Some is white, some can be green, correct?

24 A. Yes.

25 Q. Okay. There's no notation, is there, about the color on

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1 his pants, correct?

2 A. There is no notation of the color on his pants because
3 there was no color on his pants when I spoke to -- he did not
4 tell me there was color on his pants. There was -- based on
5 my interview with him, I don't believe that he was hit with a
6 marker round. It's possible, but it may have been obscured by
7 blood.

8 Q. Okay. Do you hear any pepper balls on video on June 30th
9 at all?

10 A. I did not hear anything on June 30th that I would
11 distinctly identify as paper balls, in the ones that I was
12 listening to. It is possible that some of the things that
13 were fired were paper balls. In my experience, the pepper
14 balls are fired much more rapidly and in greater numbers than
15 the FN 303.

16 Q. Okay. But your testimony is, to your recollection, you
17 didn't hear any pepper balls captured on video, correct? You
18 certainly haven't presented any in this video, right?

19 A. That is correct. I have not presented in this video
20 anything that I would say was` pepper balls.

21 Q. Okay. There is a reference there to incident 2B. And
22 there was a little red line right where -- I think you
23 indicated this is the tracking of the movement of the person,
24 correct?

25 A. That's correct.

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1 Q. I take it you don't know the name of the person that
2 you're referring to --

3 A. No.

4 Q. -- there, correct?

5 A. No, I don't know the name of that person.

6 Q. Okay. And fair to say that you referenced a Mr. Epker,
7 correct?

8 A. Yes.

9 Q. And you didn't see Mr. Epker get hit, correct?

10 A. No. I'm familiar from his declaration.

11 Q. So you don't have any personal knowledge of how that
12 occurred, correct?

13 A. No.

14 Q. Okay. Early on, there was a video played for you. It's
15 exhibit or incident -- labeled incident 2A. Remember that
16 one?

17 A. Uh-huh.

18 Q. And that's where somebody throws an object, an unknown
19 object, and an unknown officer. And an unknown
20 declarant -- right? -- you indicate gets shot with some
21 munitions, right?

22 A. That's what I see in the video.

23 Q. Okay. And I think your testimony was that it occurred
24 after they threw the object, correct?

25 A. I believe it occurred within -- a question of a very short

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1 period of time, I believe that -- yes.

2 Q. Okay.

3 A. Simple answer on that would be yes.

4 Q. So I'm no physicist, but speed of light travels faster
5 than speed of sound, right? Doesn't sound lag from, you know,
6 what you're observing on a video, correct? That's common,
7 isn't it?

8 A. It happens.

9 Q. Yeah.

10 A. I don't know that I would -- we're talking about two
11 different things. We're talking about lag between sound and
12 video in a video, and then you're talking about the speed of
13 sound, which are different things.

14 Q. Sure.

15 I guess, you know, I'm just trying to make a point
16 here that lots and lots of times you're watching video, you
17 see an action and you might see a puff of smoke or a munition,
18 and then you hear the sound, right?

19 A. That can happen.

20 Q. Okay. And that's really the -- you know, the point I was
21 trying to make.

22 So would you agree that with respect to -- I think
23 you testified that Mr. Cleinman was struck with a baton. Now,
24 he just testified this morning. He did not testify that he
25 was struck with a baton. That is, I think, what is shown in

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1 Exhibit 1A there.

2 A. I think that you could classify that as a push or, broadly
3 defined, contacted with a baton.

4 Q. Okay. And I think your testimony was that you were -- you
5 arrived at this location on June 30th sometime between 10:00
6 and 11:00, right?

7 A. Well, which location do you refer to?

8 Q. Well, I'm just referring to your earlier testimony.

9 A. Yeah. So not the location, if you're talking about where
10 the video begins, but at the location that I described, near
11 Mississippi and Albina on Lombard, yes.

12 Q. Okay. But you were monitoring things earlier from
13 livestream videos, right, that are posted online; livestream
14 being you can watch what's happening at the moment in time,
15 right?

16 A. Yes.

17 Q. Okay. And did you -- were you monitoring when the -- when
18 the protesters first arrived at the PPA building?

19 A. I don't remember what time exactly I began monitoring that
20 evening, but relatively shortly after they arrived, I was
21 monitoring, yes.

22 Q. And wouldn't you agree that projectiles are thrown at the
23 police, correct?

24 A. When I've been out watching the protesters, I have seen
25 things thrown at the police, yes.

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1 Q. And that's an act of violence, isn't it?

2 A. That would depend on the object.

3 Q. Sure. How about --

4 A. If I throw a piece of paper, that might be quite different
5 than a stone.

6 Q. Sure. And that's a fair point. Let me break it down.

7 A fist-sized rock thrown at a police officer, that's
8 an act of violence?

9 A. Yes.

10 Q. Okay. A full water bottle?

11 A. Depending on what the water bottle is made of, I think
12 you're talking about a spectrum of things. It certainly isn't
13 the same as a rock, and it certainly isn't the same as a piece
14 of paper.

15 Q. Sure. But it's an act of violence. It's a heavy object.

16 You wouldn't want me to throw a water bottle at you
17 right now and hit you in the head with it, would you?

18 A. I would not.

19 Q. Full cans of beer, soda, you've seen all those things
20 thrown. Those are acts of violence, aren't they?

21 A. I don't know that I can particularly say I've seen full
22 cans. Generally I've seen partially empty cans. And I don't
23 want those thrown at me.

24 Q. Okay. And one thing that the protesters did this day was
25 they also shined green lasers at police officers' eyes,

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1 correct?

2 A. I am very familiar with protesters' practice of shining
3 lasers of various colors at --

4 Q. That's dangerous, isn't it?

5 A. It can be, depending on the laser, the distance, and the
6 steadiness of the laser.

7 Q. And that's an act of violence, I think, isn't it?

8 A. That would depend on those factors I just described.

9 Q. Okay. Would you agree that lighting fires in the street
10 or by buildings or even in dumpsters has the potential for
11 danger?

12 A. Yes.

13 Q. Okay. And that happened on June 30th as well, correct?

14 A. There was a fire in the dumpster area that I described,
15 yes.

16 Q. And the video that you, you know, have prepared here, you
17 didn't prepare that video, right?

18 A. I didn't prepare it by myself. I was involved with
19 working with the group that prepared it.

20 Q. Okay. It wasn't an effort to be provide an objective
21 presentation from both police perspective and demonstrator
22 perspective, right?

23 A. The purpose of this video is to have context around the
24 videos that we had collected as exhibits.

25 Q. Because there aren't any highlights of Oregon State Police

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1 use of force, correct?

2 A. That is not highlighted here.

3 Q. There are no highlights of protesters lighting fires and
4 throwing projectiles in particular, right?

5 A. There is a highlight of a protester throwing something.

6 Q. And in that one -- I'm glad that you brought that up,
7 because in that one, the protester threw something at the
8 police, which I think you characterized as a half throw or
9 something?

10 A. It's not -- when you look at it, it doesn't look like a
11 full throw.

12 Q. Okay.

13 A. It is certainly launched. It doesn't go where you would
14 expect a throw to go.

15 Q. So couldn't that be just a bad throw?

16 A. Sure.

17 Q. Just like first pitches at World Series, some are good and
18 some are pretty bad?

19 A. Sometimes.

20 Q. Okay. And regardless of the quality of the throw, it was
21 clearly directed at the police officers, correct?

22 A. The object was launched in the direction of the police
23 officers.

24 Q. All right. And then it's at that moment that a police
25 officer uses force against that person, correct?

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1 A. That's correct.

2 Q. All right. And I think that's Exhibit 2A, correct?

3 A. Yes.

4 Q. Okay. And then talking about 2C -- and I think that's
5 where a protester kicks a munition back toward the police,
6 correct?

7 A. Correct.

8 Q. Okay. And so what happens?

9 And I'm assuming you've seen this many, many times,
10 including on June 30th, right?

11 A. On video, yes.

12 Q. Absolutely.

13 So the police deploy a munition, and then the
14 protesters pick it up and throw it back, they kick it back
15 toward the police. That all happens, doesn't it?

16 A. I've seen those things.

17 Q. And that happened on June 30th, on those videos, didn't
18 it?

19 A. In that instance that you're talking about, yes.

20 Q. Now, you didn't have any interview of any Portland Police
21 members, correct?

22 A. I did not.

23 Q. Or any Oregon State Police members, correct?

24 A. I did not.

25 Q. Let's talk about the tug-of-war over the banner. I think

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1 you described that during your testimony, right?

2 A. Yes.

3 Q. Okay. That was made out of PVC piping, correct?

4 A. It appeared to me to be probably unglued PVC and PVC
5 joints.

6 Q. Okay. Isn't it possible that PVC pipe can be used as a
7 weapon?

8 A. That's possible.

9 MR. MOEDE: All right. I don't have any other
10 questions, Your Honor.

11 THE COURT: Redirect?

12 MR. BRUGGEMEIER: Just one question, Your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. BRUGGEMEIER:

16 Q. That last point, PVC piping, does it look like -- can you
17 guess or estimate the size of that PVC piping?

18 A. There are various different sizes in that sign. I would
19 estimate that there's no piece over four feet.

20 Q. And what about in diameter, Mr. Comstock?

21 A. Oh, I think that is half-inch PVC, perhaps smaller.

22 Q. Okay. And what are the characteristics of that size PVC
23 piping?

24 A. It's wobbly.

25 Q. It's wobbly?

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1 A. Yeah.

2 Q. Okay.

3 A. It doesn't have much tensile strength.

4 Q. Thank you.

5 MR. BRUGGEMEIER: No questions, Your Honor.

6 THE COURT: I have a question.

7 Can you put up the first part of the video that kind
8 of shows the black and white overview.

9 Can we get it larger?

10 (A video is then played.)

11 THE COURT: You can stop it.

12 Can you tell me where on this -- and you can use your
13 finger to draw on the screen there -- where the Police
14 Association building is?

15 THE WITNESS: Can we play it a little bit further?

16 THE COURT: Sure, whatever it takes.

17 THE WITNESS: Okay. Can you pause that there.

18 I believe -- it's a little bit hard to see in the
19 black and white, but I believe right about there (indicating).

20 THE COURT: What side of the street is it on?

21 THE WITNESS: That would be the south side of the
22 street.

23 THE COURT: I don't know north and south on this
24 drawing.

25 THE WITNESS: The lower part.

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1 THE COURT: The lower part.

2 Do you believe it's down in the lower corner?

3 THE WITNESS: I believe that that is the -- in the
4 lower corner?

5 THE COURT: I'm sorry. Is it on the corner or is it
6 in the middle of the street?

7 THE WITNESS: It is on the corner. So, here, let me
8 try to outline it.

9 I believe it is this (indicating).

10 THE COURT: Thank you.

11 Any further questions in light of my questions?

12 MR. BRUGGEMEIER: No, Your Honor.

13 THE COURT: Any further cross-examination?

14 MR. MOEDE: Nothing, Your Honor.

15 THE COURT: You may step down.

16 Do you want this witness excused?

17 MR. BRUGGEMEIER: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. MOEDE: No objection.

20 THE COURT: You are excused.

21 Before you step down, please take that off, take a
22 wipe and wipe everything off, please, including your chair and
23 the screen itself, if you touched the screen.

24 THE WITNESS: It says don't.

25 THE COURT: Okay. We have something to take care of

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1 it. We'll take care of it.

2 THE WITNESS: (Complies.)

3 THE COURT: All right. Thank you very much. You are
4 excused.

5 Call your next witness.

6 (The next witness takes the witness stand.)

7 THE CLERK: This was just wiped down by the previous
8 witness, but if you want to take a wipe and wipe it down and
9 put a new cover on the microphone --

10 THE COURT: Raise a hand and be sworn, please.

11

12 PEDRO ANGLADA CORDERO

13 called as a witness in behalf of the Plaintiffs, having been
14 first duly sworn, is examined and testifies as follows:

15

16 THE CLERK: Please have a seat. State your name and
17 spell it.

18 THE WITNESS: My name is Pedro Anglada Cordero.

19 That's P-e-d-r-o A-n-g-l-a-d-a C-o-r-d-e-r-o.

20 THE COURT: And go ahead, Mr. Anglada, take your time
21 and wipe everything down.

22 THE WITNESS: Okay.

23 THE COURT: Don't worry about the screen.

24 To your right, there should be a little package that
25 has little booties that you can put on top of the microphone.

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1 There you go.

2 THE WITNESS: (Complies.)

3 THE COURT: Perfect. Thank you.

4 You may inquire.

5

6

DIRECT EXAMINATION

7 BY MR. MEGGITT:

8 Q. Good morning, Mr. Anglada Cordero. Thank you for being
9 here today.

10 Can you tell the Court your occupation?

11 A. I am a social worker.

12 Q. And did you attend a protest on June 30th?

13 A. I did.

14 Q. Can you tell me what happened that evening?

15 A. I attended a gathering at Peninsula Park that day, and I
16 spoke at that gathering. I have attended with my wife, and I
17 have brought a -- a sound system for speaking that was used at
18 the gathering.

19 After the gathering ended, my wife and I drove to the
20 Portland Police Association building. I will call it the PPA
21 from this point on, if that's okay.

22 Q. And can you briefly tell us why you attended this
23 gathering?

24 A. Yes. Well, I -- the reason I attended this gathering is
25 because I am aware of the history of white supremacy and

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1 racism in the state of Oregon and the United States. I have
2 lived here in the state of Oregon for more than 15 years, and
3 I have lived experiences of racism and discrimination from the
4 different employments I've had to encounters, social
5 encounters, to interactions with the police, especially when I
6 first move here.

7 I was very mobile on a bicycle, and I was pulled over
8 so many times for no reason and had encounters that were
9 really intimidating for no particular reason, like officers
10 talking to me in a -- in a very aggressive manner, holding
11 their gun while they're talking to me, their jaws constantly
12 clicking (indicating), that motion sound, a motion you can see
13 when they are interacting with me, very intimidating, as if I
14 have engaged in some kind of criminal act.

15 And as a social worker, as I move on forward -- and
16 I've been serving mainly people of color in the state of
17 Oregon and through my social work: Black people, immigrants,
18 Indigenous people. I've seen how the level of -- of reports
19 and encounters and interactions are so different for people in
20 these communities that I feel so close and part of, compared
21 to white folks here in Oregon.

22 And when I see that, when I have obtained some level
23 of privilege through employment, when I -- I feel I have a
24 responsibility to speak about those things, raise my voice,
25 because there are a lot of people who do not feel safe going

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1 out and speaking up about these things, because they have
2 experienced such a level of marginalization.

3 So I do have a duty to speak about these things when
4 I have an opportunity, because I have both, like I said, lived
5 it firsthand, and when I know what people are going
6 through -- interactions with the police are essentially one of
7 the most dangerous and most intimidating acts that people can
8 encounter when they go about their business.

9 But when we have these kinds of interactions, it
10 means that this is already magnified by other interactions
11 people already have in the bus stop, in the library, in a
12 social -- in a social benefits office, public offices, and so
13 on. There are so many interactions that are already happening
14 with all kinds of social control agencies, that when people
15 make contact with the police, all these things are already
16 magnified and becomes more dangerous, as these things are
17 happening.

18 So, yes, I was -- I felt very compelled, very much,
19 yes, to be in this gathering and talk about racism. And
20 essentially, I remember I was speaking mainly about
21 colonialism, which is what we are experiencing right now, what
22 I believe the Black Lives movement, if you will, is speaking
23 about, trying to challenge, things that are completely
24 connected to colonialism, to the hierarchies that they
25 have -- the system has basically put in place for people to be

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1 treated differently in this society.

2 And so that's why I was there. I want to be there
3 and make sure that I was there to challenge that.

4 Q. And so after the gathering at Peninsula Park, when you and
5 your wife arrived at North Lombard Street, what did you
6 encounter?

7 A. So we drove to the -- to the building because, like I
8 said, we brought a system. And we parked on the corner of
9 Concord, North Concord and Lombard. We parked there on the
10 corner. And as we arrived, people have already arrived. And
11 upon arrival, they -- I remember the assembly had been
12 declared over the speakers as an unlawful assembly.

13 At that point I have not seen any acts of violence
14 between the crowd or police besides chanting. And so it was a
15 very confusing, intense environment, certainly, because
16 we -- I have -- my wife and I have not witnessed any of this
17 while we arrived.

18 And suddenly there was a -- a protester, organizer,
19 who is a black woman. Her name is Danielle James. She was
20 speaking through a megaphone. We -- we know James through
21 other events. And she had a megaphone, and she was speaking
22 about the same things we were talking previously in the -- at
23 the gathering at Peninsula, and were essentially about police
24 brutality. We stand by her.

25 Nevertheless, very quickly, the police were starting

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1 to move very quickly towards -- towards where we were, and
2 starting pushing towards -- pushing the crowd towards east.
3 Very quickly I found myself retreating slowly and
4 nonviolently. There was a -- as I remember, a man who got
5 stuck in between the police line, myself, my wife, and
6 Ms. James. He was holding a bike.

7 And so the police was constantly pushing and hitting
8 with batons during all that time. As we were walking back, I
9 remember holding my arm, my right arm up, because I felt at
10 any point I could be struck with a baton on my head. I felt
11 like that throughout -- all the time that I was in
12 that -- that specific scenario.

13 During -- as we were walking back, I could feel that
14 there some sort of chemical agent in the environment. I could
15 feel -- it was spicy, somewhat of a burning sensation from my
16 eyes. My wife was constantly coughing and short of breath.
17 People around my wife also -- I could see other people
18 coughing as we were walking backwards or resisting the push
19 from the police.

20 And at that point, as Ms. James was continuing to
21 speak through the megaphone, and I was very much interested in
22 making sure -- in protecting -- trying to keep them as safe as
23 I could, both -- I was very concerned about my wife coughing
24 and others around. And, also, I believe at that point
25 Ms. James was being targeted because -- for obvious reasons.

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1 She was speaking through a microphone -- through a megaphone.

2 So, yes, we continued to retreat. And we got to a
3 point where we finally got away from the actual line of
4 police, maybe several meters. I would say maybe three meters,
5 maybe four, five. And Ms. James continued speaking through
6 the megaphone. We were, at this point, several meters back,
7 like I said, away from the immediate line of -- of police.

8 Shortly after that, a canister, a smoke canister,
9 was tossed in our direction. And I had a spontaneous reaction
10 to kick that canister away from us, away from our area. It
11 was certainly -- we were being targeted when we -- when that
12 canister was tossed in our direction. And so I kicked it.

13 At the beginning I barely touched it, so I -- and the
14 canister essentially just moved barely forward, and I
15 essentially ran quickly, and I ran and kicked it again. And I
16 kicked it towards the police because -- and away from the
17 crowd of protesters, yes.

18 I may have kicked a second can on the way. On the
19 way, as I made my steps forward and kicked the can, I may have
20 kicked a second one. I cannot remember with certainty whether
21 I kicked the same can twice or three times or whether I
22 actually kicked a second one.

23 When I kicked the -- when I kicked the -- shortly
24 after the last time I kicked the can, I was impacted twice
25 with what I assume were rubber bullets on my right leg, struck

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1 once behind my knee, on the other side of -- on the other side
2 of my right knee. And then a second time I was hit once on my
3 inner thigh on my right leg.

4 Q. Okay.

5 MR. MEGGITT: And now, Mr. Chavez, could you bring up
6 the video of Mr. Dicks, Exhibit 5.

7 BY MR. MEGGITT: (continuing)

8 Q. Mr. Anglada, before we play this, have you seen this video
9 before?

10 A. I have, yes.

11 Q. And is it an accurate representation of what occurred that
12 evening?

13 A. Yes, absolutely. And I -- yes.

14 Q. Okay.

15 MR. MEGGITT: Mr. Chavez, can you play the first six
16 seconds of video.

17 (A video is then played.)

18 BY MR. MEGGITT: (continuing)

19 Q. Mr. Anglada, you may be able to mark it on your screen,
20 but can you show us where you were at this point in time?

21 A. Yes, most happily.

22 Somewhere right there (indicating).

23 Q. And for reference, how can you tell where you were in the
24 crowd?

25 A. I can tell because I can see Danielle James was wearing a

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1 red shirt. She was also having a megaphone. She's right
2 there (indicating).

3 And there was another protester with a red jacket
4 that I remember very well. She was right here (indicating).
5 My wife was also right there by myself as well (indicating).

6 MR. MEGGITT: And, Mr. Chavez, can you continue
7 playing the video through second 23.

8 (A video is then played.)

9 BY MR. MEGGITT: (continuing)

10 Q. And, Mr. Anglada, can you point out where you and your
11 wife are at this moment?

12 A. Yes. My wife is this person right here (indicating). I
13 believe I was this person here (indicating).

14 Q. And at this point, what was your wife doing?

15 A. She was retreating. She was continuing to cough, and I
16 was very much concerned about her safety.

17 Q. And you mentioned earlier, as police were pushing, you
18 were walking slowly and I believe resisting.

19 Can you explain a little bit more how you're moving?

20 A. Yeah. We were trying to -- well, we were -- we were being
21 pushed forcefully, and so we were walking slowly. We were
22 trying to hold ground, but at the same time keeping ourselves
23 safe and move, but not -- not to run, but to walk.

24 MR. MEGGITT: And, Mr. Chavez, can you now play this
25 video through the 40-second mark.

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1 (A video is then played.)

2 BY MR. MEGGITT: (continuing)

3 Q. And, Mr. Anglada, again at this point in the video, can
4 you tell us where you are?

5 A. Yes. I believe I am this person right here (indicating).

6 Q. And what clothes were you wearing on this day?

7 A. I was wearing black jeans, a black sweater with a hoodie,
8 a cap, and I was wearing also a mask, a gray mask that I got
9 at the hardware store. It's one of those NR95 masks that I
10 have for doing jobs at the house and became, at the time, my
11 everyday mask.

12 Q. Any other protective equipment or gear?

13 A. No, I was not wearing any other protective equipment.

14 MR. MEGGITT: And, Mr. Chavez, can you please play it
15 through the 50-second mark.

16 (A video is then played.)

17 BY MR. MEGGITT: (continuing)

18 Q. And just once more, if you could point out where you are,
19 Mr. Anglada, at this point.

20 A. Yes. I believe I may be right -- I may not be seen,
21 because I think I am right on the other side of the light
22 post.

23 Q. And can you point out Ms. James, who you were describing
24 earlier?

25 A. She's right here (indicating).

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1 MR. MEGGITT: And, Mr. Chavez, can you play this
2 through second 57.

3 (A video is then played.)

4 BY MR. MEGGITT: (continuing)

5 Q. And can you describe what happened in that portion of the
6 video, Mr. Anglada?

7 A. Yes. So it shows that I hit the same can twice. And so I
8 was right -- I, at first, was approximately standing around
9 here (indicating), where this person with the gray
10 jacket -- between the person with the green and the red jacket
11 are. And I moved, I kicked the can in this direction
12 (indicating), and this is myself right here (indicating).

13 MR. MEGGITT: And, Mr. Chavez, can you play it
14 through the one-minute mark.

15 (A video is then played.)

16 THE WITNESS: And that's when I got hit.

17 BY MR. MEGGITT: (continuing)

18 Q. And that green puff there, is that the marker rounds?

19 A. Yes. At this point I'm this person (indicating).

20 Q. And what was your intent in kicking the can?

21 A. Well, my intention was to keep myself and those around me
22 safe. You can see in the video, we have already retreated
23 back. We were away from the front line between the police and
24 protesters. We were not engaging in any kind of violence. I
25 simply was standing ground and -- because we were in a protest

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1 to call out what is brutality for racism.

2 And -- and essentially law enforcement at this point
3 is displaying the force -- in my view, displaying excessive
4 force, which is one of the reasons why we're there. And I was
5 very much interested in not stopping Ms. James from having a
6 voice against police brutality.

7 And at the same time these cans represent -- to me,
8 represent a danger, in the sense that we're in a global
9 pandemic. I knew about the use of tear gas and other
10 crowd-dispersing devices that I know are harmful -- harmful to
11 people.

12 And so when I see that my wife is coughing and those
13 around me are coughing, I can see it, I can feel it in my
14 eyes, when I see these things coming my way, I -- my
15 initial -- my spontaneous reaction is to keep these things
16 away from myself and from those who are around me.

17 Q. Were you intending to injure any of the police officers
18 when you kicked it in their direction?

19 A. Not at all. That's not -- not being possible.

20 Q. How did it feel to be hit by those rubber bullets?

21 A. It is insulting, and it's certainly an example of -- of
22 excessive display of power.

23 When one is put into a situation where one is made to
24 be looked as if one is doing something wrong, something bad,
25 in the sense that I was with a group of people who were not

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1 armed, we were trying to exercise our rights to express
2 ourselves, to have free speech; and in a moment, we are tossed
3 a can of smoke. We are basically told, "Shut up. We do not
4 care about what you have to say."

5 And as I moved forward to basically open up and
6 exercise my right to have a voice, I am struck with impact
7 munitions that caused harm to my body. This is certainly
8 injuries that I sustained for weeks. The flesh in my inner
9 thigh was ruptured, and -- and a bruise continued to develop
10 for weeks and weeks, where my skin turned dark due to the
11 hematoma that I had in my -- in my thigh. And my joint behind
12 my knee was really swollen, like a tennis ball, behind my
13 knee.

14 So it's certainly a -- a display of -- of power, in
15 my view, that is excessive, and enforces the reason why I
16 actually was there that day. Because basically this assembly
17 was declared unlawful upon arrival. I mean, I drove there;
18 and when I arrived, it was already an unlawful assembly.

19 So, yes, that's exactly how it made me feel. It
20 really made me feel insulted and that when one is struck like
21 that and actually marked with paint, it triggers the history
22 of oppression in this country and how people are marked when
23 they are deemed either, you know, a criminal or someone who is
24 bad in society. And it goes -- and the history of being
25 marked goes all the way back to the times of slavery.

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1 Q. Were you impacted by any other munitions or things fired
2 by the police?

3 A. Yeah. As we were retreating -- and, actually, if you were
4 to play the video again, or not, you can actually see, as we
5 were retreating, some form of -- people call it buckshots.
6 These are some form of pellets that come -- that are shot
7 simultaneously. They seem to come out like in a cloud, and
8 they hit you like small pellets. And they were -- they were
9 shot and felt around my legs, somewhere on my back, as I was
10 retreating.

11 In the video, as I was retreating, you can see that
12 Danielle James, at the same time as other people, move her
13 face suddenly on the other side to the -- you know, away from
14 where she was turning her back towards the police, because you
15 can see that this is what was actually happening at that time,
16 that she received these impacts as we were moving back.

17 MR. MEGGITT: And, Mr. Chavez, would you bring up
18 Dicks Exhibit 5 again, paused at the one-minute mark.

19 (A video is then played.)

20 THE WITNESS: That's Danielle James right here.
21 She's, at that point, covering her face.

22 BY MR. MEGGITT: (continuing)

23 Q. And that is where you were talking about earlier --

24 A. Yes.

25 Q. -- where she seemed to be impacted by something?

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1 A. Yes. If you were to rewind a little bit, you can actually
2 see the moment where she is impacted by those devices.

3 (A video is then played.)

4 BY MR. MEGGITT: (continuing)

5 Q. And so what happened after this?

6 A. So I -- I continued walking with my wife towards the
7 corner of Concord and Lombard. And when we got there -- like
8 I said, our car was parked there. And the crowd was followed
9 by law enforcement, was followed by the police, towards that
10 corner.

11 And while we were around that corner, I saw several
12 people -- especially there was this couple of people around
13 the corner -- on that corner, there's a building and there's
14 some small -- some sort of small parking lot, and then there's
15 a light post and then houses down that corner, in that area.

16 So by that light pole, there were two people on the
17 ground. They apparently had been maced, and they were -- they
18 were in pain. They were struggling to breathe and to open
19 their eyes, and they were desperate.

20 So seeing as our car was near, my wife and I opened
21 the car and got two bottles of water, and we tried to assist
22 these people the best that we could, until they -- they got a
23 little bit better. Water is not necessarily the best thing to
24 use or to remove these things, but it was the best that we
25 could do at that point, at that time.

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1 And shortly after that, we walk -- there was sort of
2 a standoff right there between the police and the protesters.
3 Everybody was at the corner of Concord and Lombard. Police
4 returned, apparently, towards the building, the police
5 building. We came back and we stayed on Lombard, standing and
6 singing, because there were a lot of people at that point that
7 seemed to have been affected by what happened, a lot of people
8 coughing and trying to -- struggling to see and trying to
9 remove mace from their faces and so on.

10 Shortly after that, as our car had been stuck there
11 during that standoff, we knew that if that were to occur
12 again, we were going to be stuck again for another period of
13 time. We had decided that we needed to leave
14 around -- between 9:45, 9:50.

15 So we moved the car. It was a little bit earlier
16 than that. And so we moved the car about two blocks further
17 on Concord and returned. And we stayed on Lombard, just
18 seeing what was happening from farther away. If this video
19 was taken from -- I believe it's like a gray building of small
20 apartments, there we were towards the back, somewhere in front
21 of that building.

22 And we left around -- around the time I said, between
23 9:45, 9:50. When we arrived at the car, I observed that, you
24 know, three different trucks full of cops on the outside
25 wearing, you know, heavy weaponry of, you know, anti-riot gear

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1 just arrived right in front of us.

2 We were able to leave. But I could see that that was
3 exactly what was about to happen, you know, that a great
4 number of police had just arrived to the area as backup and
5 with the intention to squash whatever was left of the protest.
6 And at that point, my wife and I left.

7 Q. Okay. Could you tell what agency the officers who shot
8 you with the impact munitions were from?

9 A. I believe it was the Portland police. It was one of the
10 officers right in front of that line that you can -- well, I
11 can still see the video right here. So it was somewhere --
12 some of these policemen were the ones who shot me.

13 Q. Thank you.

14 MR. MEGGITT: No further questions.

15 THE COURT: Why don't we take our midday recess at
16 this time. We'll be in recess for 45 minutes.

17 You may step down. Put your mask back on, and you
18 may step down. And then we'll see you again in 45 minutes.

19 We are in recess. Thank you.

20 (A lunch recess is then taken.)

21 (The Court, counsel, and the witness reconvene.)

22 THE COURT: Good afternoon. Be seated.

23 You may remove your mask.

24 Cross-examination.

25

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CROSS-EXAMINATION

BY MS. SHEFFIELD:

Q. Good afternoon, Mr. Anglada. My name is Naomi Sheffield. I represent the City of Portland. Thank you for being here today.

You testified earlier that you initially started gathering at Peninsula Park on June 30th, correct?

A. Yes.

Q. And were there any police at Peninsula Park?

A. Not that I am aware.

Q. Okay. But there was no unlawful assembly declared at Peninsula Park, correct?

A. No.

Q. And do you know approximately how long you were at Peninsula Park for?

A. Maybe a couple hours.

Q. And you said you arrived on North Lombard near the PPA building after the police had declared an unlawful assembly, correct?

A. Upon arrival, shortly I arrived, that was declared through speakers.

Q. So you don't know whether there had been a declaration before you arrived, but you heard it shortly after --

A. Yes.

Q. -- you arrived.

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1 And when you arrived, you didn't follow the police
2 instructions to disperse, but you instead joined the group of
3 the crowd that was in the road on Lombard, correct?

4 A. Yes.

5 Q. And not at that exact moment -- you testified that you
6 hadn't seen anyone engage in acts of violence. But on other
7 times on the evening of June 30th, did you see protesters or
8 individuals in the group of protesters throw objects at the
9 police?

10 A. No.

11 Q. Did you see protesters throw or kick munitions back at the
12 police?

13 A. No.

14 Q. But you, yourself, kicked a munition back at the police?

15 A. I had not seen anybody doing that before I did it myself.

16 Q. And did you see anyone do it after you did it yourself?

17 A. No.

18 Q. And you testified seeing the police toss a smoke canister
19 towards the crowd, correct?

20 A. Yes, in our direction.

21 Q. Okay. And how far away from you did it land?

22 A. I would say within -- probably within a meter, tops --

23 Q. Okay.

24 A. -- from where I was standing.

25 Q. And we can watch the video again if that would be helpful,

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1 but you said you kicked the canister once, but it didn't go
2 very far, correct?

3 A. I believe I kicked it once. It didn't go very far. And I
4 took several steps forward and kicked it again.

5 Q. Okay. So when it didn't go back to the police line on
6 your first kick, you ran after it and kicked it again so that
7 it would get all the way to the police line?

8 A. So it will go -- it will go away from the crowd of
9 protesters.

10 Q. And when you kicked it a second time, it did hit the
11 police line, correct?

12 A. It went towards their area.

13 Q. Did it not reach them?

14 A. I think it went further away from where they were.

15 Q. So it went through the police line?

16 A. Yes.

17 Q. And you continued to watch it go?

18 A. No, I didn't. There was no such time for doing that.

19 Q. Okay.

20 A. So I kicked it -- immediately after I kicked it a second
21 time, I was shot.

22 Q. Okay. So you didn't see where it ended up after you
23 kicked it a second time?

24 A. Yeah. With the video, I could see that it went through,
25 but not -- but not that it actually hit them. That would not

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1 be an accurate statement.

2 Q. Okay. So at the time you kicked it, you just knew you
3 were kicking it at the police line, correct?

4 A. I kicked it away from the protesters towards the police
5 line, yes.

6 Q. And about how far from the police line were you when you
7 kicked it the first time?

8 A. I don't know. I was a couple -- like I said, the video
9 showed we were within a couple meters away from the police
10 line at the time that they tossed the can.

11 So I kicked it once. It did not go very far because
12 I barely touched it. And then I went several steps forward
13 and I kicked it again, so, you know, a couple meters forward.

14 Q. And do you know how far away from the police line you were
15 when you kicked the canister a second time?

16 A. Maybe three -- three, four, no more than five meters away
17 from the police line.

18 Q. And after you kicked the canister, you testified that you
19 were hit twice on your right leg --

20 A. Yes.

21 Q. -- with a munition?

22 A. Yes.

23 Q. And the munition left a green mark, correct?

24 A. On my pants, yes.

25 Q. And did you have two green marks in the different

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1 locations that you were hit?

2 A. I got two different marks. It actually went to -- I ended
3 up having a mark on both sides of my upper legs, near my
4 crotch.

5 So the first time I was hit, probably the time I was
6 hit on my outside, behind my knee, that part, it seemed that
7 that did not leave a big mark. However, when I was hit in my
8 inner thigh, the impact was -- the impact was pretty
9 straightforward, was very direct in my inner thigh, so -- and
10 as you could see, the cloud of paint that came after I was
11 struck, you can -- you know, you can see that it left a
12 differing impression of paint on that side, which went to the
13 other side as well.

14 Q. So the first round that hit around your knee didn't leave
15 a green mark. And the second round left a mark, and then it
16 spread to the other side of your pants as well?

17 A. I believe it left it. It is just not as noticeable as the
18 other one.

19 Q. And the photograph in your declaration is of one of the
20 impacts, correct?

21 A. I believe so, yes.

22 Q. And did you take a photograph of the second impact as
23 well?

24 A. I may have. I only provided, however, with that one
25 picture.

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1 Q. And I'd like to just quickly watch the video again, just
2 the first part and where you kicked it, so I won't start at
3 the beginning.

4 MS. SHEFFIELD: But if we can watch Dicks Exhibit 5,
5 and we'll start at about 40 seconds.

6 MR. YAMACHIKA: I'm going to move this projector. It
7 got kicked off to the side.

8 Now you can see the time stamp.

9 MS. SHEFFIELD: Thank you.

10 (A video is then played.)

11 MS. SHEFFIELD: Could you pause.

12 BY MS. SHEFFIELD: (continuing)

13 Q. And could you identify yourself in that picture?

14 A. I am this person (indicating).

15 MS. SHEFFIELD: And can you play it again, please.

16 (A video is then played.)

17 MS. SHEFFIELD: And pause, please.

18 BY MS. SHEFFIELD: (continuing)

19 Q. And so can you identify where the smoke canister is in
20 this photograph?

21 A. It is right behind the -- whoops. Did I press it too
22 hard?

23 Q. I think so.

24 A. Okay. So it's right there, there (indicating). In the
25 picture, it can be seen right behind the post. And there is

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1 some kind of additional -- some kind of additional sparkle
2 happening in that area.

3 MS. SHEFFIELD: And can you press play.

4 (A video is then played.)

5 MS. SHEFFIELD: And pause.

6 BY MS. SHEFFIELD: (continuing)

7 Q. And so in that video, you ran around this individual in
8 the green shirt --

9 A. Yes.

10 Q. -- to kick the canister, correct?

11 A. Yeah.

12 MS. SHEFFIELD: Can you press play again, please.

13 (A video is then played.)

14 MS. SHEFFIELD: And pause.

15 BY MS. SHEFFIELD: (continuing)

16 Q. And then you ran through the protesters that were ahead of
17 you, kind of towards the front of the line, to kick it a
18 second time?

19 A. Yes. Well, at this point I'm right here (indicating). I
20 was already struck at that point.

21 Q. Yeah, and you said the green, and that's when you were
22 struck, right after --

23 A. Yeah.

24 Q. -- or as you were kicking it or right after you were
25 kicking it a second time.

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1 And then I did want to ask one follow-up question
2 about -- in your testimony, you said that as you were running
3 away, you were hit by something else. And that's not in your
4 declaration, and I was wondering why that was omitted from
5 your declaration.

6 A. Yeah, well, I certainly don't intend to omit anything from
7 my declaration. But as I -- at the time I made my initial
8 declaration, I had not seen, also, the video. And as I
9 continue having this conversation and -- and reflecting on
10 what I experienced, I can actually remember those things
11 happening. It was my experience.

12 You can -- you, for instance, can see the picture of
13 my actual bruise from the impact munition. And these things
14 were certainly not as severe as -- as the rubber bullets that
15 struck my leg. So I concentrate on those things that actually
16 left an actual injury. But it is a fact that those things
17 actually happened.

18 Q. Okay. So you just didn't recall it when you drafted your
19 declaration?

20 A. It probably was not as important as the actual incident of
21 having been struck by rubber bullets.

22 Q. Okay. And today, do you remember if you saw
23 where -- where those came from or who deployed whatever hit
24 your leg later?

25 A. Well, they were certainly coming from one particular

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1 group, which was the police.

2 Q. And did you see them -- did you see --

3 A. No. No, because I was hit. And the moment I was
4 hit -- actually, you can see in the video, the moment I was
5 hit, which takes a quick second, I turn around and head the
6 opposite direction. So I cannot, at that point, see where
7 anything else is essentially coming.

8 Q. Yes. I was actually going to ask if you saw on the ground
9 what hit you after it hit you.

10 A. No.

11 And, you know, it's -- ever since that happened, I
12 have been struck by those same munitions again, those
13 buckshots. I never -- you can only hear the impact. There's
14 actually another video that I saw, where I could not identify
15 myself, but I could see -- it's the actual video that the
16 police actually took. You are certainly welcome to play it.
17 There's a moment where you can actually hear when those things
18 are deployed. They make a sound: tack, tack, tack, tack,
19 tack. There is some smoke that comes after that.

20 In the other times that I've been hit with those
21 things, because I'm standing somewhere and suddenly I feel all
22 these things coming from my chest and stuff, I know what they
23 are. They don't necessarily leave an actual injury, but they
24 cause confusion. And that, you know -- and they are made to,
25 you know, to disperse crowds.

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1 Q. So you've seen them before, but you don't --

2 A. I have heard them and felt them before. I've never seen
3 them.

4 Q. Okay. And on this video, did you see them strike you?

5 A. Not in the -- these things are so small, they cannot be
6 seen. The best -- that's why, in my testimony, when I made
7 the example of how it impact Ms. James in the video, because
8 that's an actual -- that is an actual clear example of when
9 those things happen, you know.

10 It's not easily visible or seen. But when you can
11 see -- in the example of Ms. James, you can actually see that,
12 that's what actually hit her. She is speaking on the
13 megaphone, and then suddenly there is something that comes.
14 You cannot see it from the video, but you can see it makes an
15 impact on her, to the point it makes her turn around to the
16 other side.

17 Q. And you mentioned on the video, you said you were -- you
18 were standing with Ms. James that day. So did you see that
19 happen in person or are you just saying that you saw on the
20 video Ms. James turn her head?

21 A. I felt those things as I am moving away and running. But
22 when I see the video, it -- it actually reassures my
23 statement, my experience, what I experienced that day, because
24 I can see what is actually causing them -- to the people
25 around her.

Anglada - ReD

1 Q. And my question is: On that day, did you see Ms. James
2 get struck?

3 A. Yes.

4 Q. You did on that day?

5 A. Yes.

6 Q. In your declaration, you said that you saw it on the
7 video. Is there a reason why in your declaration you didn't
8 say that you saw Ms. James struck that day?

9 A. Well, my declaration was mainly about what happened to
10 myself. I cannot necessarily speak for Ms. James.

11 Q. And then later you said that you met up with some people
12 who had been maced. You didn't see them get impacted. You
13 just saw them after the fact, correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 MS. SHEFFIELD: I don't have any further questions.

17 THE COURT: Redirect?

18

19 REDIRECT EXAMINATION

20 BY MR. MEGGITT:

21 Q. Mr. Anglada, have you looked at the picture of the jeans
22 that you were wearing that day, that you presented in your
23 declaration? Have you looked at it recently?

24 A. Not recently.

25 Q. Okay.

Anglada - ReD

1 MR. MEGGITT: May I just show it to him?

2 THE COURT: (Nods head.)

3 BY MR. MEGGITT: (continuing)

4 Q. (Handing).

5 A. Yeah.

6 Q. And having seen that, can you recall whether those marks
7 are the result of one munitions impact or of two separate
8 ones?

9 A. For that specific picture, I would say that's for one
10 specific impact, which is the one on my inner thigh, which
11 with the -- I believe with the cloud of paint that came out,
12 it -- it went to the other side.

13 And the other, you can see in that picture, is very
14 close to my crotch, which is consistent with the injury that I
15 got in my inner thigh. The other one was near the knee, so it
16 was further down.

17 Q. Okay. And can you just describe in a little more detail
18 the sensation that you felt with what you called the buckshot
19 that you felt?

20 A. The exact thing, it's like as if you're -- as if somebody
21 tosses several rocks at you at a time, several small rocks,
22 and you, like -- these seemed to be small things.

23 Q. Can you give -- how small do you mean?

24 A. I believe that these things probably are like small rocks,
25 probably the size of my -- the tip of my finger, like

Anglada - ReD

1 including my nail. I never seen these things before. I felt
2 them all over my body before, that day and other occasions as
3 well.

4 Q. Thank you.

5 MR. MEGGITT: No further questions.

6 THE COURT: Thank you. You may step down. Thank you
7 for your service.

8 Before you step down, however, would you please wipe
9 down the area, and then take the little booty off of the
10 microphone and throw that away for me.

11 THE WITNESS: I will.

12 THE COURT: Thank you.

13 THE WITNESS: (Complies.)

14 THE COURT: Don't worry about the screen. We'll take
15 care of wiping down the screen.

16 MR. BRUGGEMEIER: Your Honor, while we're doing that,
17 I'd like to enter the situ video as an exhibit.

18 THE COURT: Do you have a number?

19 MR. BRUGGEMEIER: We don't have a number.

20 THE COURT: Hang on just a second.

21 Do you want this witness excused?

22 MR. BRUGGEMEIER: That's fine.

23 THE COURT: Any objection?

24 MS. SHEFFIELD: No, Your Honor.

25 THE COURT: You are excused. Thank you;.

1 MR. BRUGGEMEIER: I think we can do Plaintiffs'
2 Exhibit 1.

3 THE COURT: Thank you.

4 Plaintiffs' Exhibit 1 is being offered. Any
5 objection?

6 MR. MOEDE: Just the same objections I made earlier,
7 Your Honor, prior to them talking about that exhibit.

8 THE COURT: All right. The same objection is samely
9 overruled. It is received.

10 Thank you.

11 THE CLERK: Do you need a label?

12 MR. BRUGGEMEIER: Yes, please.

13 MR. MERRITHEW: Your Honor, just for the Court's
14 information, that exhibit will have several files on it. The
15 best way to view what you saw in court is to open the
16 index.html file. That will open in a browser and allow you to
17 navigate through the whole reproduction.

18 THE COURT: Thank you.

19 MR. BRUGGEMEIER: And, Your Honor, at this time I
20 believe that one of the City's witnesses is not available
21 tomorrow, so we'll allow them to bring him on. I believe
22 that's Mr. Passadore.

23 THE COURT: That's fine.

24 THE CLERK: Raise a hand.
25

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ANTHONY PASSADORE

called as a witness in behalf of the Defendant City of Portland, having been first duly sworn, is examined and testifies as follows:

THE CLERK: Please, if you'd like to wipe down -- it was just wiped down, but you may do so again.

And when you have a seat, state your name and spell it, please.

And there is a little pink booty thing you can put on your microphone.

THE COURT: You may remove your mask while you testify.

THE WITNESS: Thank you, Judge.

My name is Anthony Passadore, and I'm a captain with the Portland Police Bureau.

That's spelled P-a-s-s-a-d-o-r-e.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MS. SHEFFIELD:

Q. Captain Passadore, how long have you been with the Portland Police Bureau?

A. I've been with the Portland Police Bureau almost 18 years.

Q. And how long have you been a police officer?

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1 A. I've been a police officer for just at 23 years.

2 Q. And how long have you been a captain?

3 A. I've been a captain for just barely over two years.

4 Q. And can you briefly tell us the different positions you've
5 held within PPB.

6 A. Absolutely.

7 I started out, as most everybody does, as a patrol
8 officer within the Portland Police Bureau. I worked a variety
9 of different assignments, like most patrol officers do. But
10 when I got promoted to sergeant, I began working at East
11 Precinct. And then I was assigned to the Hotspot Enforcement
12 Action Team, which was a team of officers and supervisors that
13 were responsible to respond to violent crimes and assist with
14 helping with violent crime investigations.

15 From there I was promoted to detective sergeant,
16 where I was assigned to assault/homicide. After being in
17 detectives, I requested to go back to the street to prepare
18 for a promotion to lieutenant; and I went to Central Precinct
19 as a sergeant and then was promoted to lieutenant and assigned
20 to East Precinct.

21 While at East Precinct, I supervised the night shift
22 and then the day shift and then became the acting captain at
23 East Precinct for almost a year, or about a half a year, and
24 then I was promoted to captain.

25 And upon promotion to captain, I was sent to North

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1 Precinct, where I spent almost two years or right at two years
2 at North Precinct. And then I was assigned where my current
3 assignment is now, to the RU commander of the Personnel
4 Division of the Portland Police Bureau.

5 Q. Thank you.

6 And besides those full-time positions, have you had
7 any special assignments with PPB teams?

8 A. Yes. I've had a variety of different assignments that
9 were specialty units, started out with the -- a Street Crimes
10 Unit out at East Precinct as an officer, and then eventually
11 the acting sergeant for that Street Crimes Unit,
12 investigating, again, violent crime within the East Precinct
13 area.

14 When I was promoted, I was sent to the Tactical
15 Operations Division, where I was a sergeant on the gang team
16 for right at two years or just under two years. And just
17 before that time, I was assigned to the Hotspot Enforcement
18 Action Team, which was kind of a different type of unit that
19 assisted the gang team in the Tactical Operations Division;
20 again, violent-crime-type investigations, all uniform-type
21 work.

22 And then from there I went to the assault/homicide
23 detective sergeant position and supervised investigations of
24 major felony assaults, mainly Measure 11-type assaults, and
25 then officer-involved shootings as well in the Portland Police

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1 Bureau and some homicide investigations as well.

2 And then from there, when I was promoted to captain
3 and at the first part -- at the end of my lieutenant time, I
4 began to do the rest of my training to become a CMIC, which is
5 a crowd management incident commander, for the Portland Police
6 Bureau, which is responsible for monitoring protests and
7 large-scale type activities that have large attendance and
8 groups.

9 Q. And can you tell us whether you had any special training
10 in connection with your role as a crowd management incident
11 commander?

12 A. Yes, absolutely.

13 I've taken ICS courses, 100, 200, 300, 700, 800
14 series. I've attended a series of trainings that the Portland
15 Police Bureau has their incident commanders attend or the
16 people that are training to become incident commanders. I did
17 a shadow period.

18 THE COURT: Excuse me for just a second.

19 THE WITNESS: Yes, sir.

20 THE COURT: If you wouldn't mind just trying to slow
21 down a little bit so the court reporter can keep up with what
22 you're saying. It's a little bit artificial, in that we need
23 to speak more slowly than we normally would when answering
24 routine questions, but really is important so that we can get
25 an accurate record, if you slow down a little bit.

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1 THE WITNESS: Will do.

2 THE COURT: And I like to tell people, it's just like
3 you're having a conversation across the dinner table with
4 somebody, as opposed to answering routine questions from a
5 lawyer.

6 So just take a breath and slow down a little bit.

7 THE WITNESS: Will do.

8 THE COURT: Thank you.

9 THE WITNESS: When you get into the CMIC program at
10 the Portland Police Bureau, there's a variety of different
11 initial training that occurs, where we have historical-type
12 scenarios based off of actual events that occurred.

13 So it's a -- it's kind of like an academy, if you
14 will, an informal academy, where we bring all those members
15 together. We train on concepts and policies, and then we
16 also -- we talk about historical events and roundtable
17 scenarios of how we would actually address those events,
18 especially in today's current environment, or at the time of
19 that training.

20 I also have attended the National Crowd Management
21 conference -- International Crowd Management conference in
22 Ottawa, Canada, two years ago, and then the Pacific Northwest
23 Public Order conference. And at those trainings, you get a
24 variety of instruction from -- from psychologists that talk
25 about group activity, group thinking theory, to specific

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1 trends in certain types of groups that are prone to protest
2 and how those trends are consistent or how they evolve from
3 internationally, overseas, into cities here in the United
4 States, as well as in Canada and other countries that are
5 prone to have higher than normal amounts of protest-type
6 events.

7 And it helps you have a broad understanding of how
8 crowd dynamics work, what works for other organizations and
9 agencies in the past, lessons learned, talking different
10 theories, and understanding how you can address and approach
11 crowd management and ultimately crowd control as well, from
12 the level of an incident commander.

13 BY MS. SHEFFIELD: (continuing)

14 Q. And this hearing concerns the incidents that took place on
15 June 30th, 2020. Were you working for PPB on June 30th, 2020?

16 A. Yes, I was.

17 Q. And what role were you in on June 30th, 2020?

18 A. I was assigned as the incident commander for a planned
19 protest event.

20 Q. And how many times prior to June 30th, 2020, had you
21 served as an incident commander for a crowd management event?

22 A. Probably right around 25 times. But I had also been in
23 the deputy incident commander chair, which accompanies the
24 incident commander, probably another 20 times prior to that.

25 Q. And you got into this a little bit earlier, but can you

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1 describe the role of the incident commander at a large crowd
2 event?

3 A. Sure.

4 I can kind of go into detail on this event and this
5 type of a day, if you'd like.

6 Q. That would be excellent.

7 A. When we have a large-scale event, ultimately the Portland
8 Police Bureau's operations chief will decide if that event,
9 based off of information and intelligence, rises to the level
10 where they assign a CMIC, a crowd management incident
11 commander. And if they do, then that CMIC is responsible for
12 a variety of different things.

13 In this -- on this day, as well as the days prior and
14 days since, we've had pretty much CMICs almost every single
15 day assigned to planned protest and free speech-type events.

16 So when I arrive at the incident command, the IMT, I
17 usually will arrive early. I've already had a series of
18 conversations with people from different intel communities, as
19 well as the chief's office, sometimes elected officials as
20 well, to kind of understand what the feeling is within the
21 city about how the protests have been.

22 So I'm gathering a lot of information. Some of the
23 most important information initially is just that intelligence
24 information about what we know so far of planned events within
25 the city that we're going to be ultimately addressing.

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1 Once we have those -- or that information, then I sit
2 down with the planning (unintelligible) --

3 THE COURT REPORTER: I'm sorry. The planning --

4 THE WITNESS: -- planning section chief, and we will
5 set priorities for the event.

6 A lot of the priorities are pretty consistent, but
7 they may change, depending upon nuances and changes, whether
8 there's orders that come from the Court or instructions that
9 come from elected officials -- the mayor, the police
10 commissioner -- or something that we learn intel-wise that
11 kind of changes a level of concern in a different area.

12 Once those things are decided, the priorities, then
13 I meet with the operations sections chief, who ultimately is
14 usually involved in that as well with me, with the planning
15 section chief, and we discuss what we're thinking is going to
16 happen that day.

17 I'll move into an operational briefing, where we
18 brief every supervisor in every organization that is assisting
19 at that time, and sometimes some elected officials will be
20 involved in those as well, sometimes some federal partners
21 will be as well, the Multnomah County DA's office, federal
22 prosecutors, where I'm just laying out an understanding of
23 what the day's activity we're hoping to have occur, what we're
24 seeing.

25 And during that time other people speak, like the

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1 intel section chief will speak and give an intel briefing.
2 The safety officer, which is usually a fire bureau member,
3 will speak and talk about concerns with trends they're seeing
4 of safety for keeping people, both citizens and police
5 officers alike, safe.

6 And then ultimately the purpose of that briefing is
7 to make sure every person knows what the objectives are set
8 for that day, what my expectations are as the incident
9 commander of that event, and then just give all that
10 information to everybody across the board, so then they can
11 take it down to the people or persons that they're in charge
12 with and share that direction.

13 A lot of time officers will be invited to listen in
14 on those, especially in today's age, where we do a lot of them
15 by Zoom because of COVID, so there is the ability to have a
16 lot of people pay attention. And I like that, because the
17 more people that I can reach with that type of instruction and
18 information, and the clearer across the organization and
19 agencies that are helping, I can be assured understand what
20 that direction is.

21 Once the operational briefing is done, then I'll move
22 into the actual incident command center. An incident command
23 center, if I can kind of paint a picture -- I don't know if
24 many people understand what an incident command center looks
25 like. It can vary, but the one that we have set up currently,

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1 there are a series of positions that are all within a room
2 that are all leadership positions within different
3 organizations and within the ICS structure.

4 The incident commander kind of sits in the middle,
5 even physically, so that they're surrounded by this group of
6 people that are ultimately providing information, providing
7 updates, total situational awareness, so you can have as best
8 an understanding of what is happening, and then you can make
9 decisions how to best approach it. And the more information
10 that you can get, obviously the better off you are in a
11 position to make more appropriate calls or the right call, if
12 you will, which can be difficult to do.

13 But to kind of describe that setting, you have the
14 operations section chief who ultimately is -- if you think of
15 it as a chessboard, they're moving the pieces. They're
16 telling -- if I tell them what I, as the incident commander,
17 would like an area to be contained or we're concerned about,
18 then I'll give you an instruction that "I'd like you to go do
19 this," and then that operations section chief will move those
20 pieces appropriately, talking on the radio to different
21 various commanders in the field and letting them know where
22 they need to go and why they need to go.

23 I also may give some of that direction or I may give
24 a phone call to a commander because there's something that I
25 really want them to be informed of that I know, and it's more

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1 of an intimate need of a conversation than just a quick bit of
2 information on the radio. So that operations section chief is
3 very important to the incident commander.

4 Sometimes you'll have a deputy IC that's there with
5 you. As I've explained, I've filled it before in the past.
6 And it's kind of a second seat where you can -- you can share
7 ideas, share concepts, kind of talk about what's going on,
8 because this isn't really like a fast-paced event. Sometimes
9 they're fast paced, but we want to keep it very slow. We want
10 to make sure that we're there to -- to manage an event
11 properly.

12 We have intel officers that are actually in that room
13 as well, who are talking to myself and the operations section
14 chief. They're watching different videos. They're talking to
15 other officers that may be in UC capacity in the street.
16 They're looking at downlinks from our airship, as well as
17 talking with another group of officers that are assigned to
18 monitor livestreams. And they're looking at public-fed
19 livestreams to get information to me, to share with me about
20 concerns, what they're seeing. All that information is very
21 valuable in trying to make appropriate decisions.

22 Then we have a section that is actually keeping track
23 of where everybody has moved to, because you have a lot of
24 people, and it's important to understand where those people
25 are. And that section has a big whiteboard, and they will

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1 literally have the names of different units, like Mobile Field
2 Force, Team Alpha, Team Bravo. And they'll move them into
3 areas and put a status of where they're at, so I can look over
4 real quick, and so can the operations section chief, and have
5 a better understanding of where people physically are in case
6 we need to move them around.

7 And then we'll have a scribe, whose job is to take
8 down as much information from radio traffic, so that we have a
9 good historical understanding later of what's -- the
10 communication that's occurring.

11 And then we'll have a whole section of safety and of
12 the fire bureau, who are very, very valuable partners to us.
13 They usually include a battalion chief or a high-ranking
14 official within the department, a lieutenant or above. And
15 they work with us on critical activities, such as a fire.

16 If there's a fire that occurs in a dumpster, I can
17 look at them, and they can give me a burn read of that
18 dumpster, best estimate. Is that really something that is
19 dangerous to the public right now? Do I, as the incident
20 commander, need to take action? Or can they give me advice of
21 "If you can wait, that's not going to be a concern when it
22 comes to structure fires."

23 On the same note, they can talk about the proximity
24 of a building, what they understand of that building, the
25 material it's made from, and express a sense of urgency that

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1 "That fire can catch this building on fire, and we would
2 advise that you consider this." It's more information for us
3 to have to make those tough decisions that could cause us to
4 interact with people.

5 But it's a big team of people that are very well
6 trained, organized in the national practice of ICS model. And
7 it works very, very well together. So it's not just me alone
8 making these decisions in a vacuum. It's a lot of people
9 giving a lot of input.

10 And then in the visual sense, there's a lot of TV
11 monitors that are around to help me as well as the other
12 persons involved in that room have a better level of
13 awareness. We usually will have a big monitor like the one
14 over here. Most of the time we'll have a downlink from our
15 air unit that can provide us (unintelligible) situational
16 awareness.

17 THE COURT REPORTER: Excuse me.

18 "That can provide us" --

19 THE WITNESS: Yes, I'm sorry.

20 -- provide us over watch information.

21 And that helps us become more aware of how large
22 crowds are, where they're moving to, and make decisions off of
23 what needs to be done or what doesn't need to be done.

24 And there are also several other monitors that are
25 displaying livestream feeds as well as feeds from fixed

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1 positions on security cameras and, like, police buildings, so
2 that we can have information coming in in case something is
3 occurring that we need to ultimately address.

4 BY MS. SHEFFIELD: (continuing)

5 Q. And I'll actually -- I'll cut you off there, if you want
6 to move on to June 30th a little bit more, and I'm sure we'll
7 hear more about June 30th itself.

8 But on June 30th, were you aware of the temporary
9 restraining order on less-lethal force that had been entered
10 by this Court on June 26th?

11 A. Yes.

12 Q. And I can hand you a copy. It's docket No. 42 in this
13 case. Rob will hand you a copy.

14 MR. YAMACHIKA: Do you have one for the Court, too?

15 THE CLERK: These are for the witness?

16 MR. YAMACHIKA: One is for the witness, yes.

17 THE CLERK: (Handing).

18 BY MS. SHEFFIELD: (continuing)

19 Q. Is this a copy of the less-lethal restraining order that
20 you were familiar with on June 30th?

21 A. Yes.

22 Q. And did you do anything on June 30th to ensure that
23 officers were aware of the requirements that are set forth in
24 that restraining order in docket 42?

25 A. Yes, I did.

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1 Q. And can you describe what you did that day to make sure
2 officers were aware of the restraining order?

3 A. Yes.

4 I had not -- to give a little context, I had not
5 worked until the day that this had came out, and there was a
6 series of days off for me. So when I came back, this really
7 was -- this order really was kind of new to me. I knew of it,
8 but it was the first real day of an IMT, Incident Command
9 Team, where we had it there, where I had been the incident
10 commander.

11 So I knew that if it was my day back, there probably
12 were a lot of other people, it would be the same thing, and there
13 could be people out in the field operating in the Portland
14 Police Bureau and agencies who are assisting that aren't
15 as -- that aren't familiar with this order yet, at least as
16 familiar as they need to be, especially as we're about ready
17 to go out and perform an operation that the order ultimately
18 is going to govern what we can do within and restrict our
19 activity.

20 So because of that, I had a communication with the
21 command team within the IMT, and I told them I was going to
22 write up a statement. I actually ran that statement by the
23 City Attorney's Office to make sure that legally it was
24 correct. And then I called for attention on the radio, and I
25 made sure that every single officer and supervisor that was

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1 assigned to the event had an opportunity to come to attention
2 to the radio, and then I read the statement that covered the
3 expectations of me, the incident commander for that day, as
4 well as the expectations of the rules of the restraining order
5 that came from the judge.

6 Q. And can you read aloud for the Court what you read over
7 the radio that day?

8 A. Yes, I sure can.

9 THE COURT: Read slowly, please.

10 THE WITNESS: Yes, sir.

11 My transmission started with "I want to clarify the
12 IC's direction related to Judge Hernandez's temporary
13 restraining order and the updates to the order that were added
14 June 26.

15 "CS gas is to only be used for the specific incidents
16 where the life and safety of people is in danger. Handheld OC
17 spray is not to be used in a crowd management situation for
18 the sole purpose of dispersing or moving a crowd. Handheld OC
19 spray is only to be used on individuals who are in the process
20 of displaying physical resistance or active aggression. In
21 using handheld OC spray, officers need to ensure the OC spray
22 is being directed at the person displaying the behavior,
23 paying attention to avoid any persons not involved in the
24 incident who may be nearby.

25 "I want to ensure officers are advised of the added

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1 restrictions under the judge's temporary restraining order.
2 Portland Police Bureau officers are restricted in the use of
3 FN 303s and 40mm less-lethal launchers, with or without OC
4 payload, as outlined in Portland Police Bureau Use of Force
5 directive and, in addition, shall not be used where people
6 engaging in passive resistance are likely to be subject to the
7 force.

8 "Also, rubber ball distraction devices, RBDDs, shall
9 be limited to use by Portland Police Bureau" -- excuse
10 me -- "shall be limited to use by Portland Police Bureau
11 directive and only when lives and safety of the public or the
12 police are at risk, and shall not be used to disperse crowds
13 where there is no or little risk of injury.

14 "In addition, according to new Oregon state law that
15 was signed today, in order for CS gas to be used, as well as
16 the use of any munitions that carry an OC payload, there must
17 be active activity occurring that fits the definition of
18 'riot' under our Portland Police Bureau policy."

19 And that was it.

20 BY MS. SHEFFIELD: (continuing)

21 Q. And was it typical for you to read the injunction over the
22 radio subsequent to this or at other times?

23 A. No.

24 Q. And why did you do it on this evening, again, and you
25 don't do it normally?

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1 A. Because when I sat down in the incident commander's chair,
2 I wasn't as familiar with this order as I should have been to
3 start the day. And in conversations with people, I believed
4 that.

5 So if I wasn't as prepared as I should have been
6 before the incident started, then I certainly couldn't expect
7 the people I was in charge of to be as prepared. I should be
8 more prepared than anybody.

9 And it was my first day back. This order had just
10 gone into effect. So I wanted to ensure that every single
11 officer knew the judge's restraining order and the
12 expectations of me for that day and as it related to the
13 restraining order.

14 Q. And did you ask officers to contact you if there were
15 questions about the restraining order?

16 A. Yes. I stated over the air that if there were any
17 concerns or any questions, to get ahold of a supervisor and/or
18 call the incident commander directly for clarification.

19 Q. And were you called for clarification at any point?

20 A. No.

21 Q. And I'd like to ask you a little bit to describe what
22 happened, from your perspective, on June 30th. And you talked
23 about kind of the overall incident commander and the briefing.

24 At the briefing that day, did you go over the
25 temporary restraining order in the supervisors' briefing?

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1 A. Usually we mention the temporary restraining order, but we
2 don't go over it in detail. That's the responsibility of
3 the -- of the supervisors that are -- the lower-level
4 supervisors will state that the restraining order is within
5 the objectives, and they're responsible to make sure that
6 information gets relayed down.

7 Sometimes when it's new, we may. But I do not
8 believe I did on that day.

9 Q. And when the protest began in Peninsula Park, can you
10 describe what you recall happening at the beginning, before
11 the protesters got to the PPA building?

12 A. Yes.

13 I had received information initially that there was
14 going to be a protest -- pardon me, not a protest, but a
15 gathering, and some speech -- speeches occurring within a
16 group at Peninsula Park. So we knew that was most likely the
17 location where people would gather for the day.

18 I also had information that the crowd was most
19 likely going to go to North Precinct, if and when they left
20 the park, that their intent actually was to leave the park and
21 most likely march to North Precinct.

22 That caused a lot of concerns for me, based off of
23 what was happening nationally, what had happened my last
24 shift, which was, I think, three days prior at North Precinct,
25 where the precinct had been barricaded from the outside so

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1 that police officers couldn't exit, and then it was set on
2 fire, with the intent of burning it, and the officers inside.

3 I was present on that day. I was inside that
4 building. I smelled the smoke as the fire was burning fast.
5 And it obviously resonated with me that that was an incredible
6 safety concern.

7 So as incident commander, one of the first things
8 that I did was I had a plan in place to ensure that North
9 Precinct would be safe if people in fact went to North
10 Precinct. And as incident commander, I also knew it was very
11 possible that people would go to North Precinct and they would
12 stand outside of it and they would exercise free speech,
13 absolutely.

14 But what had happened the night before -- or, pardon
15 me, on my prior shift, and nationally the trend of police
16 precincts and facilities being burnt down, and the amount of
17 intel information coming in to me from our intel units, that
18 there was communications within the protest community that
19 that was possibly an objective of some people, that was a
20 concern. So initially I put our -- the majority of our
21 resources around North Precinct because of the information
22 that I had.

23 The crowd initially was in Peninsula Park, about 200
24 to 250. I could see it on live screen -- or, pardon me,
25 livestream, and from the air unit as well, over watch. It

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1 didn't appear to be anything super alarming. We did have a
2 lot of people that were dressed similar, in black, which in
3 and amongst itself can mean nothing. But a lot of times in
4 the protest community, it can be significant. It can be an
5 indicator of a potential group that is combining together.

6 I remember seeing that there were shields that
7 were -- some of the people in the park -- actually quite a few
8 people, more than average, were carrying. And that is a
9 concern to me as well, because when people tend to take those
10 to a crowd control -- or, pardon me, a crowd event, it can be
11 an indicator of what may be to come. It doesn't mean it's
12 going to happen, but it just raises my alert level, as an
13 incident commander, that this is present, so I need to be
14 prepared in case something like this occurs where they're
15 using shields.

16 But for the most part, at the park it was pretty calm
17 and we had no police officer interaction. We had no need to
18 have police officer interaction. And if that type of activity
19 had continued, we wouldn't have -- you know, I wouldn't have
20 instructed officers to go and engage in any way, shape, or
21 form at the park.

22 Shortly after a little time had passed, I was
23 informed that the crowd was going to be leaving the area. You
24 could get this information from the livestream. So I was
25 being told that from people within the incident command that

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1 were monitoring the livestreams.

2 And then I was informed from the officers monitoring
3 the livestreams that they could hear on the livestreams some
4 communications occurring that people within the crowd were
5 making comments that there were -- their words -- riot police
6 at North Precinct, and that because of that, they were going
7 to march to the Portland Police Officers Association building
8 off of Lombard.

9 The crowd, shortly after that, began to take to the
10 streets, and they started to walk towards the direction of the
11 Portland Police Officers Association building.

12 Pardon me.

13 In my mind, the preplanning was very successful. We
14 were keeping the crowd that we were concerned about
15 potentially doing harm to the building or burning it away from
16 that building.

17 So the PPA technically is another police facility,
18 and it had been in some of the conversations amongst the
19 communications of protesters on social media. So I knew,
20 through our intel groups, that the Portland Police Bureau
21 Association building was seen very similar to what North
22 Precinct was and what Central Precinct was. And both Central
23 Precinct and North Precinct had been set on fire within the
24 prior month, and both buildings I had been in physically at
25 the time it occurred.

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1 So my level of concern still existed for the -- the
2 venue change of being the Portland Police Bureau facility.
3 But I realized that by just placing officers in the mere
4 presence of there, it could actually sway people away from
5 going to North Precinct. So my hope was that we could use
6 that tactic again. Same crowd, same time frame, it would be
7 reasonable that it might work.

8 So I instructed members of different units, of RRT
9 units and Oregon State Police units that were assisting us, to
10 go to the PPA building and just maintain a presence outside
11 around the building. My hope was that -- I know -- I know,
12 because I've seen the practice, but I also know because it had
13 just happened, that there's people watching those locations
14 and ultimately giving information to the people in the crowd.

15 People at the park somehow learned that there were
16 police officers staged outside of North Precinct. It's a
17 reasonable belief that they got that information from people
18 that are going there and kind of seeing -- lookout scouts, if
19 you will.

20 So my hope was they would be doing the same thing at
21 the PPA building, and if I just put officers out there, that
22 hopefully that information would be relayed, and they may
23 change course again and go somewhere else. My hope was they
24 would just continue to march, maybe go back to a park, speak,
25 do whatever they wanted to do, and we wouldn't have to have

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1 any police interaction, because as long as there wasn't
2 any -- any active aggression or violence or destruction of
3 property.

4 So I moved officers over so that they could be
5 visible within the area of the PPA building.

6 Q. And what do you recall happening when the group of people
7 from Peninsula Park arrived at the PPA building?

8 A. I remember that within probably less than a minute from
9 when the group of marchers got to, you know, maybe a block or
10 two or half a block from the officers at the PPA building,
11 that I immediately started getting reports from officers on
12 the ground that they were taking projectiles, that they were
13 having rocks, bottles, full cans of pop, beer, all kinds of
14 things, immediately thrown at them.

15 Q. And how did you respond to this?

16 A. Well, initially with, you know, a great deal of patience.

17 And I can help to -- people understand that a little
18 better by when I first started out as a CMIC, it really
19 bothered me to see officers taking projectiles and things.
20 Obviously it's dangerous, and nobody should be subjected to
21 that, whether you're a police officer or a citizen. But
22 irregardless, this is a special team that's trained and
23 equipped with certain types of equipment, that that's the
24 position they're supposed to be in.

25 So when I would go and meet with them in the early

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1 stages of my career doing this job, which really had only been
2 about a month or so, they would reassure me that "Although
3 it's not pleasant, that's what we're there for, so don't get
4 overly concerned if you hear us saying that. We'll let you
5 know when it's a problem, when the danger is so significant
6 that we can't handle it. We're trained to be here. They give
7 us the equipment to be here. So know that we'll let you know
8 when it gets past that comfort zone."

9 So initially it was alarming, but it wasn't over
10 alarming, because this is what these officers are there for.
11 They're equipped to take a certain amount of that. They're
12 certainly well-trained to take a certain amount of it.

13 And the initial reports were like other reports I'd
14 heard, for the most part, in the past: "We're taking a rock.
15 We're taking a bottle."

16 And then it started to increase, and then you could
17 hear the change of tone in the voice of officers. I mean, it
18 began to escalate and increase very bad.

19 And over the course of probably the next few
20 minutes -- and I looked in the log on this -- there were
21 probably 15, 20 radio communications directly to me from
22 officers on the street, repeatedly, of items that are being
23 thrown at them that are very serious items, with the
24 descriptions of those items being rocks the size of softballs
25 or baseballs, to the point where I ultimately had a phone

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1 conversation, one of those conversations that I explained
2 earlier, that's a little more intimate, a little more
3 information, with the RRT commander that night, the ground
4 commander, which was Lieutenant -- or Acting Lieutenant Mike
5 Pool, who relayed to me in no uncertain terms that these items
6 that were being thrown at them were being thrown in a manner
7 that was incredibly dangerous to them, with a velocity that
8 was significantly dangerous. They were rocks, as he said,
9 some of them the size of baseballs. And they could, in his
10 words, seriously injure somebody if they had been in just the
11 right area.

12 That's the type of information, as an incident
13 commander, that I need to be able to make a decision, because
14 every decision has a consequence in it. And in some
15 decisions, they are decisions that are going to affect people,
16 affect their lives, both police officers and both citizens,
17 and that does not -- it does not weigh lightly on my
18 shoulders, nor the people that I work with, trust me.

19 But that was valuable information to me from Acting
20 Lieutenant Pool because it really relayed to me the danger
21 that they were facing at that moment in time. And, as a
22 result of that, I made an immediate or a fairly immediate
23 declaration of unlawful assembly, a civil disturbance, had
24 that relayed over the sound truck, with direction, that we
25 were instructing people to leave the area which was to the

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1 east, which was the way they had just came.

2 And that -- that information was -- I ensured that
3 that information was relayed over the sound truck. And in
4 doing that, the sound truck will tell us when they're relaying
5 information, but a lot of times the people in the office or in
6 the IMT that are monitoring the livestream, they will tell me
7 as well.

8 And that's important to me, because the sound truck
9 knows when they delivered information, but it doesn't mean
10 that people can hear it all the time. So if we can hear it in
11 the livestream of the crowd, then we know that the people in
12 the crowd are able to hear it. And for me, that's very
13 important, because you want to give people direction, but you
14 need to make sure they understand what that direction is. And
15 then you want to give them an opportunity to comply with the
16 direction.

17 Q. And so after you declared an unlawful assembly and the
18 sound truck made the announcements, what happened next?

19 A. I authorized for a push, if you will, to be made to
20 disperse the crowd. And we were going to disperse them to the
21 east.

22 The amount of projectiles really didn't let up. I
23 mean, it was -- it was a continuous -- and I'm seeing this, in
24 some regards, on video, but video is -- it's not the end-all.
25 It doesn't -- it doesn't -- in any situation, it gives you a

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1 one-dimensional view of what's happening. You really can't
2 see everything. You can't experience it.

3 The information I was receiving over the radio really
4 was the most valuable information. And they both synced up
5 with what I was seeing, what I was hearing was a level of
6 violence that was occurring towards the officers that was very
7 dangerous.

8 So I authorized the push and dispersal of the crowd
9 to the east, making the announcements and giving time for them
10 to be able to make that move. I believe the time frame that
11 was given, according to some notes that I had made, was
12 probably around 10 to 12 minutes.

13 And if I think of myself at that location, walking,
14 how far I could go in 10 to 12 minutes, I could easily cover
15 three or four city blocks.

16 Q. And after PPB officers and OSP officers began to push
17 east, can you explain what happened during the period of time
18 from the initial push east until you ultimately declared a
19 riot later on in the evening?

20 A. Yeah.

21 At one point in time, the projectiles kept coming.
22 And when the information was relayed to me that there was a
23 concern about how serious that danger was, I gave an
24 authorization over the air for RBDDs to be used, if needed.

25 And I don't have to give that authorization over the

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1 air. The officers know what the restraining order is and they
2 know what the Portland Police Bureau's policies are, and they
3 are responsible for their own force. But I gave that over the
4 air for a reason. I wanted to make sure people knew.

5 And then once we had pushed the crowd back -- I don't
6 remember exactly how far, but a few blocks -- the crowd had
7 kind of stopped. And as the incident commander, one of my
8 objectives, if it's possible, is to give the crowd the
9 opportunity to reset.

10 The crowd always determines what happens in these
11 events. If the crowd is orderly, if there is no civil
12 disturbance, if it's just a gathering, even if -- I mean, in
13 Portland, we're very accustomed to these issues -- and I don't
14 even want to call them issues, but these exercises of freedom
15 of speech.

16 And in a lot of cases, you know, you're protecting
17 the opportunity of people to say things that are against what
18 you believe in and what you do, but that's their right. The
19 speech doesn't matter to me; the behavior matters.

20 So I had been able to change that through the course
21 of allowing the push, and now I wanted to allow for a reset.
22 So I instructed the -- and it's a common thing that we will
23 do. I instructed the RRT units to pull back. I asked them to
24 pull back to the PPA building.

25 And the purpose of that was to remove the police

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1 from that -- that flash point, if you will, that point where
2 the police are having physical contact with -- with the
3 protesters, and move them back so that we can -- it's taking
4 the temperature of the crowd. What are they going to do? If
5 they continue to comply, why would we push?

6 If they don't comply and they just stand there and
7 make other decisions, I weigh out, what's the best course of
8 action under the current situation? And if they do as this
9 crowd did and they continue to throw -- immediately throw more
10 rocks and bottles and to move forward on the officers again,
11 then we have to evaluate how we're going to keep them from
12 going further towards ultimately that Portland Police
13 Association building. And that's what happened.

14 Q. And you mentioned authorizing the use of RBDDs. What
15 happened in response? Are you aware of whether any PPB
16 officers deployed them at that time?

17 A. Yeah, I'm absolutely aware.

18 I made a note to myself on this because, as an
19 incident commander, it was very critical to me, taking -- you
20 know, just as I said, you take the temperature of a crowd, you
21 take the temperature of your people. Officers are human
22 beings. They can lose their composure just the same as any
23 other human being. And part of our job and the supervisors in
24 the street is to gauge that, to monitor that.

25 And they had just taken a large amount of very

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1 dangerous projectiles, and I had authorized them the ability
2 to use a nonlethal force tool that's restricted unless you're
3 exposed to actions that could seriously injure you. And it
4 was without a doubt that they were in that situation.

5 Officers are very disciplined and able to make that
6 decision, and they could have deployed that on their own. But
7 I wanted them to know that I, as the incident commander -- I
8 had awareness enough of what they were going through, that
9 they needed to feel comfortable that if they wanted to deploy
10 that, I knew that they could, and I was telling them that they
11 could. Ultimately they're still responsible, but I had told
12 them that they could.

13 Immediately -- not immediately, but after a couple
14 minutes had passed or a minute or so, I was informed over the
15 air that the crowd behavior had changed and RBDDs weren't
16 used. They weren't deployed I think was the terminology that
17 was used.

18 And for an incident commander, for me, that was
19 significant, because that -- that takes the temperature of my
20 people in the street. They had the ability to utilize a
21 less-lethal tool. I am quite certain they would have been
22 justified. But even with the change enough in the behavior of
23 the crowd, they decided not to use it, an independent choice,
24 not a supervisor down there on the ground saying, "Don't do
25 it." You had the incident commanders telling you, "You are

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1 authorized to, if you feel you need to," and they still
2 didn't.

3 And so that was very important to me, very important
4 for me to understand and to take into consideration as to my
5 officers on the street and, if you will, their temperature.

6 Q. And you said you were hearing reports of a lot of objects
7 being thrown. Did you hear any reports of people being hit by
8 objects?

9 A. Absolutely.

10 Once we moved the officers back towards the PPA and
11 they formed a line in the street, there was a period of time
12 where there was -- I kind of describe it as a little bit of a
13 standoff. There wasn't movement forward from the crowd and
14 there wasn't necessarily movement forward from the police.
15 There was this -- just this line that had been drawn. And if
16 I remember correctly, there was a distance of maybe, you know,
17 20, 30 yards and sometimes less.

18 You'd see people coming up and doing things and
19 trying to antagonize officers, and that was -- that's
20 consistent with what we'd seen from time to time throughout
21 events. But what you would see, and I was hearing, was there
22 were projectiles being thrown.

23 Now, as I watched -- and I'm watching a lot. I have
24 an iPad that's a Portland Police Bureau iPad. I'll put it
25 right next to me, and I'll monitor Twitch, just like thousands

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1 of other citizens in the community do. And it gives me a
2 whole list of videos that are going and all the livestreamers
3 that are at that event I'm managing.

4 And I could see people in the back of the group, in
5 the middle of the group, in the front of the group, from
6 different perspectives. And I could see that the majority of
7 the people in the front of the group, they weren't being very
8 violent. They may be yelling. They may be screaming. They
9 weren't necessarily following the orders of dispersal. But is
10 that something that's a concern to me? I weigh that, as
11 incident commander, of what we were going to do. And really,
12 with what we experienced, it wasn't.

13 But in the middle of the group and in the back of the
14 group, I could see people that were actively engaging and
15 throwing objects. And I was being informed by numerous
16 officers on the radio -- and, again, in our logs I put a
17 little check by every time somebody told me that they were
18 being thrown -- a projectile is coming at them, and a lot of
19 them are describing the projectiles.

20 And on the videos you could see the velocity of the
21 projectiles, and some of those projectiles are coming in at a
22 velocity that not even a major league pitcher's arm could
23 throw. They're being slung from devices like slingshots that
24 increase the danger to officers and citizens that could be hit
25 by these items. I was constantly getting updates about that.

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1 And then I started getting updates: "Officer has
2 been hit. They're down. We're pulling them out. Medical is
3 going to be checking them. Another officer has been hit.
4 Criminalist has been hit. We're having to pull him back to
5 get checked by medical."

6 That's a very, very uncomfortable feeling when
7 you're -- when you're responsible for -- for the safety of the
8 people you're asking to be in that -- in that position, a very
9 uncomfortable feeling. But that started to increase in
10 intensity.

11 Q. And at some point you declared a riot, correct?

12 A. That's correct.

13 Q. Why did you declare a riot?

14 A. Because the amount of projectiles that were being thrown
15 at officers, the level of danger that those projectiles posed
16 to officers, the size of those projectiles, the velocity of
17 those projectiles, people were already getting hit, getting
18 injured, there were -- it certainly met the definition of a
19 riot by Portland Police Bureau standards of six or more people
20 engaged in violent tumultuous behavior.

21 I mean, this was -- there were dozens and dozens of
22 people engaged in this behavior, and it was very dangerous to
23 the officers. And we were about to get somebody seriously
24 hurt. I was convinced of it. It was -- it was a scene like I
25 had never seen before, as an incident commander, of

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1 projectiles.

2 And I stood out in the portico at North -- or at
3 Central Precinct with officers on nights that I wasn't the
4 incident commander to experience it.

5 And a frozen apple landing four, five, six inches
6 from your head, exploding on a wall, being slung by a
7 slingshot, make no mistake the significant injury that can
8 cause to a human being. And that's what they were
9 experiencing.

10 Q. And approximately what time did you declare a riot?

11 A. A riot was declared around 2210 hours, so 10:10 in the
12 evening.

13 Q. And what did you observe in response to the riot
14 declaration?

15 A. It was interesting. When I authorized the
16 declaration -- and then there's obviously a little bit of a
17 delay for that to get out to the sound trucks. And we have
18 pre-designated recordings, and usually the incident commander
19 will review those first, because we're preplanning ahead. I
20 want the declaration of a riot, and I want a gas announcement
21 with it, so that we're complying with rules and laws.

22 But once I was informed that the announcement was
23 being made by the sound truck, I had Sergeant Schauntz
24 Southern (ph), who was my -- my livestream observer that night
25 listening to livestreams and feeding information, and he

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1 looked back at me and said, "I hear the announcement for gas
2 going to be deployed and riot, and the crowd is cheering,"
3 which was significant to me, because you usually don't cheer
4 when something bad is about to happen. You cheer when you've
5 accomplished something or you're happy about something.

6 And it was at that point this time, I believed,
7 unfortunately, as incident commander, it had gotten to a point
8 where certain people in the crowd -- and I certainly would
9 never sit here and say the entire crowd. That would be
10 impossible to say and not true. But a large group of people
11 in the crowd had just accomplished their objective.

12 Q. And after -- after the riot announcement, did things
13 continue to be deployed at officers?

14 A. Yes.

15 And, also, I'd like to add in that that on the
16 livestream you could hear instructions being given out in the
17 crowd to "Put on your gas masks," because now it's time to put
18 on our gas masks. You know, we do the same thing.

19 Why would I sit here and say that that's ridiculous.
20 We need the same -- we're planning as well, but so is this
21 group. They were planning.

22 And, yes, after the riot had been declared,
23 projectiles were still being thrown and thrown at officers.

24 Q. And you said after the riot was declared, you authorized
25 the use of CS gas?

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1 A. Yes.

2 Q. And announcements were -- were announcements made prior to
3 CS gas?

4 A. Absolutely.

5 Q. Okay. And then officers did deploy CS gas?

6 A. Yes, they did.

7 Q. And after officers deployed CS gas, can you just give us a
8 brief rundown of the rest of the evening?

9 A. Yes.

10 In the time frame of which CS gas was deployed, it
11 was very, very effective on what I wanted to have occur with
12 that crowd. Did I want to have to use CS gas with that crowd?
13 Absolutely not, on nobody. But I had to have that crowd
14 dispersed. The level of violence was incredibly dangerous.

15 I had even watched in a livestream where one of the
16 front row people of the protesters was hit with one of the
17 projectiles in the head. It's not just the police that were
18 in danger. There were citizens that were gathering, looked
19 like they had come out of their house, saw them on livestream,
20 made an announcement, "If you live in the area and you're out
21 here, there's been a declaration of unlawful assembly. You
22 need to go into your house," because they're subject to the
23 same type of projectiles that are coming at us.

24 So after the gas was used, it was very effective in
25 dispersing the crowd. And then RRT pushed, and they pushed to

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1 the east. And that was the direction that was given in the
2 announcements of the riot, "You're to move to the east," which
3 is away from where the PPA building was.

4 The level of resistance was incredible. I mean, I
5 could -- it was being told to me on the air, "There is heavy
6 resistance." The use of -- of -- what's the word I'm looking
7 for? -- trash containers being rolled out into the street as
8 shields, as blocking devices, and pushed towards officers.
9 Those are extremely heavy. They can be very dangerous.

10 So my direction to my operations section chief, who
11 was moving the pieces, if you will, was "We're not disengaging
12 on this one. We're going to push and disperse. The purpose
13 here is to disperse."

14 We tried the disengagement. And with this crowd on
15 this day, like something I had never experienced up to that
16 time, other than some events downtown, which is a different
17 dynamic, we're going to disperse this group, and we're going
18 to push them back. We're going to push them -- my
19 instructions -- all the way towards I-5.

20 And there was a reason for that. If you know
21 Lombard, and you know that as you are east of -- or, pardon
22 me, as you are west of Interstate, you have more housing. You
23 have a school there and some other things and some gas
24 stations right at the intersection. But as you get further
25 down towards the PPA, you've got more housing.

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1 And this event had already gotten to a level where it
2 was extremely dangerous, not just for the police, as I said,
3 and for citizens that were involved in the protest, but also
4 citizens within their houses and that were coming out and,
5 like any human being, curious.

6 So I wanted to push this back to where it was more
7 of an industrial area. Because if you can get to the east
8 side of Interstate Avenue, you have Fred Meyer, you have a
9 gas station, you have a lot of grass fields, Wendy's, and then
10 you have the Interstate overpass over I-5, and then you go
11 into the Peninsula Park area, very little housing. There's
12 still some housing, but very little housing, in case this
13 continued.

14 And it would limit the exposure potential to citizens
15 who chose not to be involved, and I could also gauge who
16 wanted to be here. I believe I knew who wanted to be there,
17 because I had given them almost from the time we had made the
18 declaration of a civil disturbance at roughly 9:05 to a riot
19 an hour and five minutes later -- I could walk to Gresham in
20 an hour and five minutes. I was very confident that people
21 engaged in this had all the opportunity to leave if they
22 wanted to, and I wanted them to.

23 But if they chose to stay and they continued this
24 level of violence, then it was safer to have it where it was
25 more of in that industrial area and it wasn't around people

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1 that could incidentally be involved in it. So I had them push
2 back all the way to I-5.

3 Q. Okay. And then ultimately did the crowd disperse that
4 evening?

5 A. Well, eventually, it did.

6 Once they got to I-5, it just didn't stop. They
7 continued to throw rocks and things of that nature. But we
8 had time. I allowed them to be in that area from Albina to
9 I-5 for quite a bit of time, because it wasn't anything that
10 was endangering -- the dynamics had changed. And we weren't,
11 from my definition, anymore in a -- necessarily a riot. We
12 had changed. You don't get to declare a riot one second and
13 then we're good through the night, and then at midnight the
14 next day, it's a new day. It's the actual behavior. So there
15 certainly was an unlawful assembly occurring.

16 You know, I had the airplane ask me specifically, or
17 I was asking specifically, "Are you seeing people on the
18 sidewalks?" And they were informing me how many people were
19 on the sidewalks up there. Because that's important to me,
20 because if you're on the sidewalks, you're not even blocking
21 vehicular traffic. That's important for me to know when I'm
22 going to make a decision.

23 And it just didn't have a level of urgency at this
24 time of night in this area where we needed to clear the
25 street. We gave them quite a bit of time.

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1 Eventually I asked for some selective arrests. And
2 the reason for that was because in the video, as you
3 could -- as I explained, pardon me, you could see people in
4 the middle and back of the crowd who were really agitators. I
5 mean, they definitely were. And they were the more violent,
6 assaultive people throwing things. And you could see them on
7 video. And I was getting updates on the radio of that. I was
8 getting updates from the plane on that. They could see it.

9 So going over I-5 created a unique opportunity for us
10 in that I could ask if RRT could develop a plan to go around
11 and behind the group. And if they began to throw items again,
12 they could come in from behind and we could arrest some of
13 those people.

14 And the reason for -- that I wanted to arrest some
15 of those people wasn't just to arrest the violators, but in
16 hoping to change the group dynamic. Those were the people
17 that were organizing tactics. Those were people that were
18 incredibly assaultive in their behavior. And if we could
19 remove them from this equation -- a lot of times when people
20 get into a group, we know, you know, that they will do things
21 in a group that they wouldn't do by themselves. And if we
22 could take those people out that were organizing them, that
23 were giving them instructions, that were motivating them to do
24 this behavior and engage in some capacity -- not everybody was
25 throwing rocks. Not everybody was -- was shooting bottle

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1 rockets at the police and throwing frozen water bottles. But
2 they were involved in a way that kept us from being able to,
3 you know, take those people into custody.

4 And they were strategically put there. There were
5 times on the livestream where I could hear them, people in the
6 back calling, "Shields to the front, because police are
7 coming. Shields to the front. Shift our formation." That's
8 a tactic. That's a plan.

9 So I tried to have some selective arrests that we
10 did, in hopes that it would diffuse that crowd and we could
11 take some of the leaders, if you will, and the instigators out
12 of the crowd. That was effective to some extent. We were
13 able to get a few arrests out of that.

14 And shortly after that, the crowd dispersed into the
15 neighborhoods which are off to the south near Peninsula Park.
16 When that occurred, I gave specific instructions to all the
17 ground-level commanders that we are not going into the
18 neighborhood to further disperse any of these people.

19 And the reason for that was a lot of times we'll see
20 when the crowds fracture into smaller groups, a lot of times
21 you can watch them just start walking off in directions, and
22 they disappear in small groups, and then a lot of times it
23 will be done.

24 That's ultimately what happened later when they
25 formed back up, which I will explain. But that was what my

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1 hope was would occur now. And if you go into those
2 neighborhoods, you can force some of those people to do things
3 they might not do because they panic and they could try to
4 take refuge in somebody's property, they could try to take
5 refuge in somebody's house. I'm not saying they would, but
6 there is a higher potential of it. And that could create a
7 different type of conflict, that we don't want anything like
8 that to happen.

9 So I instructed nobody is to go into the
10 neighborhood, but instead we organized to where we had
11 officers go over towards the North Precinct area and then
12 stayed back in the direction of the PPA.

13 And eventually the planes saw people gathering up in
14 the blocks in smaller groups and then walking and meeting up,
15 and they made it out onto Martin Luther King Boulevard,
16 probably somewhere around Ainsworth. They gathered up in a
17 larger group of about 60 to 75 and began to march towards
18 North Precinct.

19 And when that happened, I redirected officers
20 over -- gave an instruction to redirect them over to North
21 Precinct to set up a defensive posture of the precinct so
22 that we have officers present and we can ensure that North
23 Precinct cannot be damaged, because North Precinct poses a
24 significant concern for the Portland Police Bureau, and I
25 don't think it's a secret to the public.

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1 It's an old building. That building is -- it used to
2 be a Fred Meyer. It's a wood-frame structure through the
3 entire ceiling. You burn that ceiling, you burn the entire
4 structure. It's not going to take long. We know that. We've
5 had the Fire Bureau look at it. We plan for that. That's a
6 huge concern, along with the Kelly building. Harder to set
7 East Precinct on fire. You still can, but much harder. But
8 that precinct, North Precinct, is an extreme fire risk.

9 The fire risk at North Precinct and the fire risk at
10 the PPA, the fires themselves are concerning. But if you
11 recall me talking about about having Fire Bureau emergency
12 command in the IMT, we also talk about the fire danger. And I
13 don't know if anybody forgets how bad the fire danger was in
14 Oregon this year, but I'll be happy to remind them. Many
15 cities burnt to the ground, small cities.

16 And we definitely had a concern that if North
17 Precinct or if the PPA caught on fire, that structure isn't
18 just going to burn and sit there. You're going to have embers
19 that go and connect to trees, grass, the top of other houses.
20 And it was an extreme fire danger this year. Everybody knows
21 it. Unfortunately, we saw the result of it, thankfully not in
22 this case. But it wouldn't have been any different.

23 So there was a purpose for setting up those defensive
24 positions, and I had those officers go back and -- and prepare
25 for that at North Precinct. The crowd moved back to North.

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1 They gathered up in the intersection of MLK and Killingsworth.
2 They pulled dumpsters out of the gas station. They lit them
3 on fire again, the same location they had lit dumpsters on
4 fire and pushed them up against North Precinct three days
5 prior, three or four days prior, and were almost successful in
6 burning the building down, so incredibly concerning.

7 Once that happened, I gave an order of unlawful
8 assembly. Again, we weren't at a riot. The crowd hadn't rose
9 to that level. The dynamics had shifted. Me, as the incident
10 commander, I had the responsibility of weighing that and
11 gauging it and making sure we don't overreact. It was an
12 definitely an unlawful assembly. We made the announcement and
13 I gave the order of dispersal (unintelligible). At that time
14 officers came out and they dispersed the crowd after we gave
15 them plenty of time --

16 THE COURT REPORTER: I'm sorry.

17 THE WITNESS: I'm sorry, ma'am.

18 THE COURT REPORTER: Judge, may we take a break?

19 THE COURT: Sure.

20 THE WITNESS: Sorry.

21 THE COURT: That's okay.

22 We'll take our mid-afternoon recess at this time.

23 We'll be in recess for 15 minutes.

24 Put on your mask before you step down.

25 We are in recess. Thank you.

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1 (A recess is then taken.)

2 (The Court, counsel, and the witness reconvene.)

3 THE COURT: Please be seated.

4 You can go ahead and take your mask off.

5 Slow down, please.

6 THE WITNESS: Yes, sir.

7 MS. SHEFFIELD: Your Honor, before I get started, we
8 had conferred while we were on break about timing. And does
9 the Court plan on ending at 5:00, around 5:00 today?

10 THE COURT: Yes.

11 MS. SHEFFIELD: Okay.

12 THE COURT: Is there a reason not to?

13 MS. SHEFFIELD: No. We just wanted to make sure that
14 there wasn't going to be a desire to push through until 7:00
15 or 8:00.

16 THE COURT: No, I don't have that desire.

17 MS. SHEFFIELD: Excellent. Thank you.

18 THE COURT: It's riveting, but I don't have that
19 desire.

20 MS. SHEFFIELD: Thank you, Your Honor.

21 BY MS. SHEFFIELD: (continuing)

22 Q. Captain Passadore, can you tell us, were there other
23 police agencies besides PPB policing the protests on
24 June 30th, 2020?

25 A. Yes. The Oregon State Police were assisting.

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1 Q. And does Oregon State Police have jurisdiction to police
2 within the City of Portland?

3 A. Yes, they do.

4 Q. And are you aware of any intergovernmental agreements
5 between the Portland Police Bureau and the Oregon State
6 Police?

7 A. No.

8 Q. Did OSP come to Portland on June 30th at the request of
9 the PPB?

10 A. Yes, at the request of the Portland Police Bureau, and I
11 believe the City of Portland in general.

12 Q. And how does Oregon State Police integrate into PPB's
13 response to a protest?

14 A. Well, in this situation, they would integrate in the
15 incident command system. The incident commander would
16 ultimately have command over the Oregon state police officers
17 as part of the overall function of the ICS model.

18 But as I explained earlier, within the command post,
19 there would be a representative from the Oregon State Police
20 sitting close by. In our model, they're literally directly
21 behind me, where we can have conversations to ensure that
22 there's not a policy-related issue that I am giving an
23 instruction that is in conflict with one of their policies for
24 their officers, just to make sure that there's a smooth
25 understanding of -- or that there's no disconnect, more so,

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1 and there's a conflict with an instruction that maybe they are
2 not allowed to do. It would be very rare, but important to
3 know.

4 Q. And is the Oregon State Police subject to Portland Police
5 Bureau policies on force?

6 A. No, they are not.

7 Q. And at any point on June 30th, did you direct OSP officers
8 to use force?

9 A. I authorized the use of CS gas, which would give them the
10 ability to use CS gas as a level of force. But ultimately, I
11 didn't direct them to give any other type of force.

12 Q. And is CS gas different than other types of force? Is
13 there a reason that's authorized by you as opposed to other
14 force, like we discussed, like FN 303s or 40mms?

15 A. Yes.

16 In the system of the Portland Police Bureau, by our
17 policies, only the incident commander is authorized to allow
18 CS gas to be deployed. Part of that is because it's obviously
19 affecting a larger area and encompassing a larger group.
20 That's why we take into consideration the whole behavior of a
21 crowd. And it has to rise -- the violent, tumultuous-type
22 behavior has to rise to a level where the incident commander
23 ultimately believes that's the only choice that's left.

24 I've declared unlawful assemblies before and riots
25 before where we haven't deployed gas. It's a use of force

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1 within those environments that will affect a
2 larger -- potentially affect a larger group of people. So we
3 just have checks and balance in place to ensure that it's not
4 just used by one person's interpretation of what they're
5 seeing, other than the incident commander, who is getting all
6 that information from all those different sources, as I
7 explained earlier.

8 Q. And at any point on June 30th, did you direct OSP officers
9 to use impact munitions, like 40mm less-lethal munitions or
10 FN 303s?

11 A. No, I didn't direct any officers and not OSP.

12 Q. And at any point did you direct OSP troopers to use
13 aerosol restraints?

14 A. No, I did not.

15 Q. And besides the authorization for rubber ball distraction
16 devices that you previously described, at any point did you
17 direct OSP troopers to use rubber ball distraction devices?

18 A. No, I did not.

19 Q. Are you aware of any PPB officers directing OSP officers
20 or troopers to use less-lethal munitions?

21 A. I'm not aware of that.

22 Q. And can you briefly describe any concerns that you would
23 have, having been an incident commander, if there were further
24 limitations placed on PPB's use of less-lethal tools for crowd
25 control and crowd management situations?

Passadore - X

1 MR. MERRITHEW: Objection, relevance.

2 THE COURT: Can you ask your question again?

3 BY MS. SHEFFIELD: (continuing)

4 Q. Can you describe any concerns that you would have, having
5 been incident commander at these events, if any further
6 restrictions were placed on PPB's use of less-lethal tools for
7 crowd control and crowd management situations?

8 THE COURT: The objection is sustained.

9 MS. SHEFFIELD: I have no further questions.

10 THE COURT: Cross-exam.

11

12 CROSS-EXAMINATION

13 BY MR. MERRITHEW:

14 Q. Commander Passadore, I want to make sure I understand the
15 structure of how the incident command works in one of these
16 events.

17 On June the 30th, when you were the incident
18 commander, where were you physically?

19 A. Physically I was inside of the IMT, the Incident
20 Management Team, the command post. That is located, on that
21 day, at the Portland Police Bureau's training facility.
22 That's off of Airport Way.

23 Q. The people on the ground who are actually interacting with
24 protesters, I think you described them as being organized into
25 squads; is that right? Am I using the right word?

Passadore - X

1 A. For the police, sir?

2 Q. Yes.

3 A. We do tend to organize them into squads. They can be a
4 Mobile Field Force squad, which is made up of precinct
5 officers, and RRT squads that are made up of the Rapid
6 Response Team officers. That way each squad has a supervisor
7 overseeing that group.

8 Q. And the incidents that we're talking about with respect to
9 force used on protesters on June the 30th, those are the RRT
10 squads that were acting for the police, right?

11 A. I believe there was a mix of RRT and Mobile Field Force
12 used in the event.

13 Q. Would the Mobile Field Force officers also be wearing
14 armor that's commonly referred to as riot gear?

15 A. No. But the type of equipment they're using is called
16 blunt force impact technology, and it's not designed to
17 withstand like a bullet or ballistics. It's designed like
18 that of a catcher would wear to just impact an object. The
19 Mobile Field Force units do not wear that equipment.

20 Q. So they're just wearing like a regular police uniform?

21 A. Correct.

22 Q. So if we review the videos and we see people who -- police
23 officers who are wearing some type of armor, is it safe to
24 assume that those police officers are RRT and not the Mobile
25 Field Force officers?

Passadore - X

1 A. I couldn't say completely, but in general you should be
2 able to. But some of the blunt impact technology is designed
3 to go underneath your uniform, so it's not as authoritarian or
4 obtrusive looking or offensive looking as well. So you would
5 see people that don't appear to have that outer gear that
6 still could have that under their uniforms that are part of
7 RRT.

8 Q. So for those squads that are on the ground, who controls
9 when they decide to move east or west in an incident like on
10 June the 30th?

11 A. Well, ideally, the incident commander is going to give
12 direction when we're doing large-scale movements or
13 interacting with the crowd. And I would use the term
14 "ideally," because we still allow supervisors and officers, if
15 they're exposed to an immediate risk of danger to themselves
16 or if they see somebody else that is, then we allow them the
17 opportunity.

18 We have great trust and faith in them, with their
19 training that we've given them and their experience, that they
20 can make an appropriate decision. But that's only if they see
21 something that's happening that they believe they need to act
22 upon to safely control a situation.

23 And if they do that, then they are supposed to report
24 it immediately to their supervisor, and they report that to
25 the incident command, because that can have an effect on -- on

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1 what we're seeing or behavior, and I need to understand that
2 to gauge what ultimately is occurring.

3 Q. Okay. But when we see all the police officers in a
4 protest action moving one block to the east, in unison, that's
5 something that they're doing at the direction of incident
6 command, right?

7 A. Yes.

8 And the majority, far majority of the time, that's a
9 planned event. Even if I was to say, "I want to push this
10 crowd to the east," I have prepared and had a conversation
11 with the RRT commander, either myself or the operations
12 section chief, to tell them to implement a plan, because it's
13 up to them on the ground to look at everything and see, what
14 is the best way they can accomplish that objective I just
15 asked them to accomplish.

16 They'll put that plan together. And then they'll
17 relay back up, "We're ready whenever the order is given."
18 That order sometimes may not be given or it may be given. And
19 then they would execute that plan.

20 Q. And when the police then, after moving east, move back
21 west, that's also at the direction of incident command, right?

22 A. Yes. But there are times when I've experienced that
23 senior-level, ground-level leadership, the RRT commanders,
24 they sense that they're having a good effect, and they can
25 stop the push. They absolutely stop the push. And they'll

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1 gauge when that's appropriate.

2 Sometimes we'll give a distance, if that's
3 appropriate for the situation, "I want you to push two blocks
4 to the west" or "I want you to push west," and they'll gauge
5 when that best is for it to stop, depending on a variety of
6 different things.

7 Q. And so when you've got an OSP squad integrated into this
8 police line, like you had on June the 30th, when those squads
9 are moving east and west, that's at the direction of incident
10 command, right?

11 A. That's true.

12 Q. What about pulling off a particular squad and replacing it
13 with another squad, either because they're tired, need a rest,
14 whatever reason? Who makes those decisions?

15 A. Usually there's a variety of people in the incident
16 command center that are paying attention to that.

17 I'm not looking for how long someone has been out on
18 scene usually. I'm more focused on the overall picture. But
19 I had explained that we have a person that actually moves
20 positions over. A lot of times they'll be tracking how long
21 officers have been in the field, do they need a break. Also,
22 the supervisors on the ground will call up and ask for relief
23 if it's been a long period of time.

24 Now, operationally, there are times that we will
25 move certain units in places where other units are already

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1 staged. A good example would be if we have a Mobile Field
2 Force unit in an area where we have a large group coming, and
3 we have some indication that there's going to be a physical
4 conflict, objects thrown, something like that. We want to
5 move that Mobile Field Force out and put the Rapid Response
6 Team in.

7 The reason for that is, like I explained, they have a
8 higher degree of training. They have better equipment to be
9 able to tolerate more -- I don't know what the word -- I don't
10 want to just paint it as a bad picture, but more abuse, more
11 objects that may strike them. They have more protection. So
12 we'll use them intentionally in those areas.

13 That's one way that that change may be made from the
14 incident command, whether it's the incident commander or it's
15 the operations section chief who recognizes that should be
16 done.

17 Q. So, in general, all the big movements that were done on
18 June the 30th by the Oregon State Police squads were directed
19 by incident command; isn't that correct?

20 A. All the big movements in general were -- were directed by
21 incident command. You may have some movements on the street
22 where supervisors will move to one side of the street or
23 other, position their people where it's safest, depending on
24 geography, depending on buildings. Those are decisions that
25 they absolutely get to make, as long as it falls in the

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1 overall direction of the incident command.

2 Q. And if you, as the incident commander, believe that one of
3 the Oregon State Police squads was acting in a way
4 that -- that concerned you, that you thought was negative in
5 some way, you'd have the authority to pull them off of the
6 action, right?

7 A. Absolutely.

8 And I can assure you that I've seen it happen on the
9 ground level, where we've had sergeants in leadership address
10 it. It wasn't with OSP, and it wasn't necessarily in this
11 case. But any time we see inappropriate action or action that
12 we were concerned about, we address it.

13 Q. So fair to say, then, that you did not see anything on
14 June the 30th from any of the OSP squads that you found
15 concerning and found the need to address; is that right?

16 A. No, I can say that I did not. And if I did, even if I was
17 concerned about it, I would have talked to the OSP commander,
18 command officer in the area, just to kind of get a better
19 understanding of what they were doing. But I saw nothing that
20 rose to that level of concern for me to stop something or to
21 even inquire.

22 Q. I want to ask you some specifics about your knowledge of
23 what was happening at the protest when you were at a remote
24 location.

25 A. Sure.

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1 Q. You discussed watching or having somebody within your team
2 who was watching livestreams; is that right?

3 A. Correct, and I was as well.

4 Q. Are you familiar with a livestreamer by the name of Eric
5 Greatwood?

6 A. I can't say that I am personally, but if they're fairly
7 popular, I've probably seen some of their livestreams, but I
8 can't say for sure.

9 Q. This would be an individual who films from the top of a
10 20-foot painter pole and a GoPro camera. Does that ring any
11 bells?

12 A. I've seen a few people that have done that, but there's
13 one person in general I've seen do that a lot, and it offers a
14 pretty good picture at times.

15 Q. You said that in addition to the livestreams, you also
16 have video from -- I'm not sure you used the word "video,"
17 actually, so I'll ask.

18 What exactly do you get from air? Do you get a video
19 feed of what they're seeing on the ground?

20 A. Good question. We have a downlink that comes to our
21 server, through the website -- and it's a secure one -- that
22 allows us to view what the tactical flight observer is viewing
23 in the airplane.

24 And then I have the ability to ask them to look at
25 specific areas for any area of concern or whatever. They tend

Passadore - X

1 to do an overall view, but they will also do something
2 specific if I ask for that to be done.

3 Q. And then you have some sort of radio transmissions from
4 the people who are on the ground, right?

5 A. That is correct. We're all on one common radio frequency.

6 Q. And the one common radio frequency, is that shared with
7 the OSP officers as well?

8 A. Yes.

9 Q. You've described that that radio frequency and the
10 officers' descriptions of projectiles is what triggered your
11 decision to announce an unlawful assembly; is that right?

12 A. Yes, the behavior of the crowd, which specifically related
13 to the projectiles that were -- the number and volume of
14 projectiles being thrown at officers, and the level of danger
15 that I was being -- that was being articulated to me, to have
16 a better understanding of how serious that was.

17 Q. Was that tactical traffic recorded in any way?

18 A. No.

19 Q. Why not?

20 A. There's a scribe that actually -- that actually takes
21 notes and does a log for us, but it's not recorded.

22 Q. You described your experience working in a lot of
23 different positions within the Portland Police Bureau. Have
24 you had the occasion to use tactical radio channels in other
25 assignments within the Portland Police Bureau?

Passadore - X

1 A. Absolutely.

2 Q. And are you aware whether those tactical radio channels
3 are recorded?

4 A. Some are recorded and some are not recorded.

5 Q. Do you know why the tactical radio channel that relates to
6 protest activities is not recorded?

7 A. I'm going to give you my absolute best answer. I don't
8 know. But I've advocated strongly that we do, because if I
9 could play that recording in this court, it would describe
10 what I'm trying to describe a thousand times better.

11 I'm an advocate of doing that. But there are
12 different schools of thought throughout the discipline of
13 public order, and we currently don't do that. There have been
14 discussions. But I am an advocate of doing it.

15 Q. So since we don't have an audio recording of the
16 descriptions given by officers in realtime, do we have
17 anything else, other than the videos, to show us the
18 projectiles that you've described?

19 A. Well, there's numerous -- in order to actually show you,
20 physically show you, there's numerous videos. Then there are
21 videos of officers actually holding up the projectiles after
22 they impacted the ground, to show the size, diameter.

23 And oftentimes the Portland Police Bureau will
24 photograph those and tweet those out to the citizens so they
25 have a better understanding of what the police were going

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1 through.

2 So we do have livestreams video. We also have
3 criminalists, which is a promoted rank in the Portland Police
4 Bureau, who take video for us, evidentiary. We have that
5 video as well.

6 Q. In your testimony, when you were discussing this
7 heightened concern, did this -- did I have that right in my
8 prior question? I want to make sure I did -- that that
9 preceded your initial decision to announce an unlawful
10 assembly.

11 A. Can you restate the question? I'm not sure I understand.

12 Q. Sure. Let's just go step by step.

13 At what time did the protest arrive at the PPA?

14 A. They arrived approximately, I believe, around 9:04 p.m.

15 Q. At what time did you announce an unlawful assembly?

16 A. Between 9:05 and 9:08.

17 Q. All right. So there's about one to three minutes after
18 they arrive, the unlawful assembly announcement is made?

19 A. That's correct.

20 Q. So before the unlawful assembly announcement is made, is
21 that when the projectiles became alarming? Is that what
22 preceded that announcement?

23 A. The unlawful assembly was made in response to the
24 projectiles.

25 Q. Okay. That's exactly what I was trying to ask you.

Passadore - X

1 MR. MERRITHEW: All right. Mr. Chavez, if you could
2 queue up Exhibit 15X.

3 BY MR. MERRITHEW: (continuing)

4 Q. Commander Passadore, you submitted a couple declarations
5 in this case. And what we're about to watch is a video you
6 submitted in connection with your declaration. Have you seen
7 this video?

8 A. I've seen a lot of video. I'll be better able to tell you
9 if we watch it.

10 Q. Yes. Let's play it.

11 (A video is then played.)

12 MR. MERRITHEW: Pause it for a second, Mr. Chavez.

13 BY MR. MERRITHEW: (continuing)

14 Q. Just by way of explanation, Commander Passadore, the audio
15 doesn't seem to feed into the courtroom very well, but the
16 video seems to be fine.

17 A. Sure.

18 (A video is then played.)

19 MR. MERRITHEW: Pause it there.

20 BY MR. MERRITHEW: (continuing)

21 Q. So clearly this is after the protest has arrived at the
22 PPA, right?

23 A. Just to clarify this -- and I don't know the answer to
24 this. This is the night of -- that we're talking about here
25 today?

Passadore - X

1 Q. That's correct.

2 A. Okay.

3 Q. So do you recognize the building on the left?

4 A. I believe the building on the left -- the brown one is
5 just a building I'm not familiar with, but I believe the one
6 just past it on the video, I believe that's possibly the PPA
7 building.

8 Q. Okay. And are you able to identify whether the officers
9 who are in the foreground of this video are Portland police
10 officers or Oregon state troopers?

11 A. I can't say for certain. I believe, because of their
12 badges, they're OSP officers, but we have an anniversary star
13 badge that our officers are allowed to wear as well. I can't
14 say for certain, but it looks like it most likely would be the
15 Oregon State Police squad, but I don't know for sure, sir.

16 Q. Okay. In your declaration --

17 MR. MERRITHEW: Actually, while we're doing that, can
18 you continue to play this video, Mr. Chavez?

19 (A video is then played.)

20 MR. MERRITHEW: Can you pause it there?

21 BY MR. MERRITHEW: (continuing)

22 Q. In your declaration that you filed, signed on July 5th,
23 you said that Exhibit 15, which this is one of, "are links to
24 clips from the livestream video that I watched during the
25 event on June 30th, 2020."

Passadore - X

1 So is this one of the videos that you watched
2 on -- actually watched yourself on June 30th, 2020?

3 A. If that is my statement, I believe that is absolutely
4 true. But I'm not -- I want to make sure that there is an
5 understanding, I'm not sitting here like this, just focused on
6 one video. There are multiple videos going on at one time.
7 This would have been one, as well as a lot of my other tasks
8 and discussions. But it would have been one that I was able
9 to view and viewing.

10 Q. I want to ask a couple questions about what we're seeing
11 here on the video screen.

12 The police officers who are on the left-hand side of
13 the screen are wearing some type of helmets and other types of
14 armor. Do you see that?

15 A. Yes.

16 Q. Did you direct these police officers to be in this
17 location on June the 30th?

18 A. Yes.

19 Q. Did you direct them, knowing that this is the equipment
20 that they would have on at that time?

21 A. Yes.

22 And if I had seen them in any other equipment, I
23 would have instructed them to put this equipment on.

24 Q. In the time that we've been watching this video, have you
25 seen any projectiles thrown from the crowd to the police?

Passadore - X

1 A. I haven't seen it in this video. I don't know what the
2 time frame of this video is, sir, as far as when they arrived
3 and how long we've watched it.

4 Q. Okay. But you haven't seen any projectiles thrown in this
5 video, right?

6 A. No, not in this video.

7 Q. And you'd agree with me that at this point in the evening,
8 we still have a fair amount of daylight, where we can see
9 further than we would at night. Is that right?

10 A. Sure.

11 MR. MERRITHEW: Go ahead. Could you play it at
12 double speed, until we get to about 5:30.

13 BY MR. MERRITHEW: (continuing)

14 Q. So I think what we just heard was a direction from the
15 LRAD to "Move east. Move east now."

16 Did you hear that?

17 A. A direction from a Portland police officer through the
18 LRAD system, yes.

19 Q. What I didn't catch anywhere in this video was any
20 declaration of an unlawful assembly being announced on the
21 LRAD. Would the direction to move east come before or after
22 the declaration of an unlawful assembly?

23 A. It would depend. If the -- if the sound truck is aware
24 that we're going to be moving to the -- moving people to the
25 east, it's very possible that they may, ahead of time, give

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1 direction to move to the east. And as the incident commander,
2 I wouldn't have a problem with that at all.

3 If they announced a declaration ahead of time, that
4 would be an incredibly big problem. But they may have
5 announced something ahead of time just to give extra warning
6 to the crowd or a heads up in direction, but I can't say for
7 sure that's what happened here. I'm not familiar with exactly
8 what is going on in the context of this.

9 Q. Do I understand your answer to mean that you did not
10 direct the sound truck to make announcements to this crowd to
11 move east?

12 A. No. You -- I certainly made a declaration, at one point
13 in time, of unlawful assembly and that we're going to disperse
14 to the east -- not disperse, pardon me -- giving direction to
15 the crowd to leave to the east.

16 Q. At this point we still haven't seen any projectiles being
17 thrown by the crowd. Is it your belief that projectiles were
18 being thrown in a different area that's not captured by this
19 video?

20 A. I can't say for certain that projectiles aren't being
21 thrown within this video. I can't. But I do know from my
22 notes and from the log, as well as -- let me digress. I can't
23 tell you what time exactly this video was occurring. But I do
24 know that from 2104 in the log to 2108, nine transmissions
25 came through about rocks, different types of projectiles, and

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1 green high-powered lasers being pointed at officers.

2 This here is a very, very small geographical
3 footprint of ultimately what we're dealing with, with 250 or
4 so people.

5 Q. So we get oriented, can you tell us whether the street
6 that's on the right-hand side of the screen, is that Lombard?

7 A. Yes. They should be standing -- the crowd is standing in
8 and on Lombard Street.

9 Q. And they're facing south, towards the officers who are
10 facing north; is that right?

11 A. Yes, sir.

12 MR. MERRITHEW: Go ahead and keep playing it through
13 to 5:30, Mr. Chavez, please.

14 (A video is then played.)

15 BY MR. MERRITHEW: (continuing)

16 Q. Did you catch that?

17 I know we're playing it in double time and the audio
18 is terrible, but I thought I heard a declaration of unlawful
19 assembly over the LRAD there.

20 A. And I apologize. I heard the direction to go to the east,
21 but it was very fast. I couldn't hear if there was a
22 declaration of unlawful assembly.

23 MR. MERRITHEW: Just back it up to that. Slow it
24 down to regular, so we can hear it.

25 (A video is then played.)

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1 BY MR. MERRITHEW: (continuing)

2 Q. So did you hear the announcement that time?

3 A. I sure did.

4 MR. MERRITHEW: If we can -- yeah, why don't you just
5 play it at normal speed.

6 (A video is then played.)

7 BY MR. MERRITHEW: (continuing)

8 Q. Did you see the projectile thrown there, about midway
9 through the line of officers?

10 A. I'm sorry. I did not.

11 Q. Okay. We'll back up. And if you just pay attention
12 to -- I don't know if I can describe it better than midway,
13 down the line, you'll see something flying.

14 A. Okay.

15 (A video is then played.)

16 BY MR. MERRITHEW: (continuing)

17 Q. Did you see that?

18 A. Sure did.

19 Q. Is that the type of thing that you were concerned about
20 that evening?

21 A. Absolutely.

22 Q. We'll keep moving forward on this in double speed to try
23 to move through it more quickly.

24 A. Yes, sir.

25 (A video is then played.)

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1 BY MR. MERRITHEW: (continuing)

2 Q. On the right-hand side of the screen, in front of the blue
3 lights from a police vehicle, is that a line of police
4 officers now moving towards the protest, toward the east?

5 A. That's what it certainly appears to be.

6 Q. Okay. And would that be consistent with your direction in
7 the early stages of that evening to move the protest east,
8 away from the PPA building?

9 A. That's correct.

10 Q. All right. So between the time that this video starts,
11 which we don't know exactly, and the time that this push from
12 the police start, did you see any other projectile thrown at
13 the police other than the one I noted?

14 A. I didn't. But I'd also note the one that I could see is
15 probably 15 feet into the screen. And that screen goes back
16 at least a block, a block and a half.

17 Q. The front of this building that the police are standing in
18 front of, are those windows that the police are standing in
19 front of?

20 A. They certainly appear to be.

21 Q. Do you know whether any of those windows were broken on
22 June 30th?

23 A. I've seen those windows broken in the past. I can't tell
24 you -- and the ones around. I can't tell you whether that was
25 on that specific night. I didn't make note of it, and I

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1 really couldn't say for sure.

2 Q. Also in your declaration, you noted that prior to sending
3 these OSP squads to the PPA building, you got a phone call
4 from Daryl Turner?

5 A. Yes.

6 Q. Why was Daryl Turner calling you?

7 A. That's a good question. That's what I asked him.

8 I'm an incident commander involved in an incident
9 command, and I honestly don't have time to be talking to the
10 union president.

11 Q. So did he tell you why he was calling you?

12 A. He told my operations section chief.

13 Q. Okay. So you didn't actually talk to him, then?

14 A. I don't recall if I talked to him. I think I talked to
15 him that night. I called him later, because I wanted to at
16 least touch base with him. But as the incident commander, it
17 was a great distraction.

18 I've had precinct commanders call me when we're at
19 precincts, and I haven't talked to them, where I told them,
20 "Inappropriate time." I get their concern, but I'm in charge
21 of an event that needs my attention.

22 Q. You said early on in your testimony that the PPA building
23 was technically a police facility. What did you mean by that?

24 A. Well, it's identified by citizens as being part of the
25 Portland Police Bureau, and that's where the union

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1 membership -- that's their location. That's where they have
2 their offices. That's where they have their equipment.
3 That's where their president, their treasurer are located.
4 That's where they have their meetings. And it also contains
5 an area where they can have breaks if they're working in that
6 area and need a quiet place to use the restroom or for
7 lunches.

8 So it's identified as a police facility in that
9 regard. I do not believe at all that the City of Portland
10 owns it. I believe the PPA owns it.

11 Q. You mentioned briefly that one of the sources of
12 information you have about what's going on in a crowd is
13 undercover officers. Did you have any undercover officers on
14 the ground on June the 30th?

15 A. Yeah, I -- I believe that we did. But it's important to
16 know that as an incident commander, I wouldn't have anybody in
17 my command in this crowd, with what was going on. They were
18 more used and they're more so used in the periphery, to give
19 information of what they can see.

20 It's pretty dangerous to put a police officer into a
21 crowd like this. Not to say everybody in the crowd is
22 dangerous, but there's a dynamic about crowds that I talked
23 about earlier, and there's a level of danger within that
24 crowd, and that could pose a situation where it would expose
25 an officer to too much risk.

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1 Q. You were discussing in your testimony that the dynamic
2 that was playing out this evening was that people in the back
3 and in the middle of the crowd were launching projectiles at
4 the police; and people at the front of the crowd were, by and
5 large, not doing that, right?

6 A. Well, I did say that. But I think it's important to know
7 that the dynamic of the crowd through the event ebbed and
8 flowed. And that wasn't necessarily consistent from beginning
9 to end, but it certainly was occurring a significant amount of
10 time.

11 Q. The less-lethal options that are available to officers on
12 those front lines include 40mm launchers, FN 303s, OC spray
13 and RBDDs and batons, right?

14 A. That is correct. But some of them are only accessible to
15 certain officers and some within certain units.

16 Q. All of those tools are necessarily going to be used on
17 people in the front of the crowd, right?

18 A. Did you say they are necessarily or aren't necessarily?

19 Q. Are necessarily.

20 A. Not necessarily, no.

21 Q. Tell me, if you're on the -- if you have one of your
22 officers on the front line here, can he use an FN 303
23 effectively against somebody throwing projectiles in the back
24 of the crowd?

25 A. One would think no, and I'm very inclined to say no. But

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1 there could -- it depends on the totality of the circumstance.
2 And there could be a situation where an officer could have a
3 vantage point, where they could use specifically a 40mm, which
4 I'm familiar with, because I was certified on it as well. We
5 switched to that round from the beanbag because, it's
6 shocking, but it's more stable, it's more controllable, it's
7 more precise.

8 So I don't want to say, yes, we can. That's not the
9 case. But it would be possible, if the conditions were right,
10 that they could do that and, if the threat level posed a
11 significant enough threat, that they would be able to justify
12 their actions.

13 Q. OC spray certainly, from a handheld canister from somebody
14 at the front of the line, isn't going to do anything to
15 somebody launching rocks from the back of the line, right?

16 A. Well, it certainly wouldn't be intended to do so. I
17 wouldn't say that it couldn't be effective. I've been around
18 OC as an unintended target of it, and it's still effective in
19 the way it can affect you.

20 But it would not be something that we would
21 necessarily encourage our officers or train them to do, to
22 fire OC through a crowd to another person. But if it was
23 deployed, it could still affect that person's ability to
24 continue an assault.

25 I wouldn't think they would deploy it to people in

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1 the back of a crowd, no.

2 Q. In your role as incident commander, do you get down into
3 those types of tactical training decisions that are made by
4 members of the RRT units?

5 A. No, I do not.

6 Q. So do you have any role in assisting the RRT officers in
7 determining whether or not, for instance, kicking a smoke
8 canister is active aggression or passive resistance?

9 A. Well, I could certainly formulate my opinion after 23
10 years of experience and police work. But I don't give that
11 direction to people on the ground. And every use of force by
12 an officer, they are ultimately responsible to justify that
13 use of force.

14 Q. And when that officer -- when the officers are justifying
15 each use of force, am I correct in understanding that the way
16 you are trained at PPB is that the use of force must be
17 justified based on the actions of the individual who force is
18 used against?

19 A. That is correct. But in -- when it comes to the
20 deployment of, in this case, CS gas, it's obviously deployed
21 against more people. That's why there's more checks,
22 balances, and an overall incident commander making that
23 decision based off of a lot of information on the crowd's
24 behavior and aggressiveness.

25 Q. In your radio transmission informing everybody on the

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1 tactical channel, I assume --

2 A. Yes.

3 Q. -- of the contents of the temporary restraining orders,
4 you say that PPB officers are restricted in the use of FN 303s
5 and 40mm less-lethal launchers.

6 Did you intend to inform everybody on that channel
7 that OSP troopers were not subject to those restrictions?

8 A. No, that was not my intention.

9 Q. What was your intention?

10 A. To inform everybody of what the wording in the temporary
11 restraining order was and is and what my expectations as the
12 incident commander are.

13 Q. In your role as incident commander, do you have any role
14 in reviewing individual uses of force used by RRT officers
15 during an incident?

16 A. I do not review that, but I am very familiar with the
17 review process. But I do not review those.

18 Q. It's fair to say, then, you did not review the force data
19 collection reports from June the 30th?

20 A. That's correct, I did not.

21 MR. MERRITHEW: That's all my questions.

22 THE COURT: Redirect?

23

24

25

Passadore - ReD

REDIRECT EXAMINATION

BY MS. SHEFFIELD:

Q. I'm just handing you what's marked as Exhibit I, already in the record.

(Handing) Can you describe what Exhibit I is?

A. Exhibit I is the ICS Form 214. It's the activity log. And it is dated for the time period of June 30th, 2020 to July 1st, 2020, starting at 1500 hours, which would be 3:00 p.m., to 0200 hours, which would be 2:00 a.m.

Q. And you testified that the tactical radio line isn't recorded. What is the job of the scribe in the incident command center again?

A. The job of the scribe is to take down critical information that is relayed over the radio. As we've learned today, that can be -- in all seriousness, that can be very difficult when there's a lot of communication going on.

And our preference is that they can collect all of those transmissions. But if there's a lot of talk going on, then they're trying to catch the most important pieces of those transmissions.

Q. Does that document reflect what the scribe essentially wrote down from radio transmissions?

A. That's correct.

Q. And can you read the scribe notes from 2104 to 2108?

A. Yes.

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1 "2104: Protesters arrive. OSP MRT taking bottles.

2 "2104: OSP MRT now taking rocks.

3 "2105: Suspects shining green lasers.

4 "2105: OSP continuing to take rocks and bottles.

5 "2106: Now throwing rocks at the PPA office windows.

6 "2106: OSP MRT taking more bottles and green lasers.

7 "2107: OSP MRT continuing to take more projectiles.

8 "2107: Subjects are on the roof of Heavenly

9 Doughnuts, shining green lasers.

10 "2108: Air 1 on scene.

11 "2108: OSP MRT taking more rocks.

12 "2108: Sound truck making announcements, giving
13 dispersal order and ordering crowd to the east of Interstate."

14 And then it goes to 2111.

15 Q. And on the video we just watched earlier during your
16 cross-examination, the building, the tan building to the left,
17 that wasn't the PPA offices?

18 A. That's correct.

19 Q. The PPA offices were further away from the videographer in
20 that video?

21 A. That's correct.

22 Q. And I wanted to follow up a little bit on OSP and
23 integration. I think you testified that you directed
24 officers' kind of movements, including OSP officers and PPB
25 officers when they moved to move east and to help move the

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1 crowd east; is that correct?

2 A. Yes. It would be more correct to say that I gave the
3 overall objective, "That's what we're going to do," and then
4 gave that information to the field commanders, RRT field
5 commanders, their supervisors; and then they executed that.

6 In the video you see where it looks like a supervisor
7 walks up, taps on the shoulder of one of the officers and
8 whispers in their ear. That's most likely the relaying of
9 that information, just from the sequence of that video and the
10 announcements we heard. It would be consistent with how they
11 would relay it to everybody.

12 And then they would not move on that until I said it
13 was okay to actually execute that move.

14 Q. And less-lethal tools, like 40mm less-lethal launchers and
15 FN 303s, aren't used to move a crowd; is that correct?

16 A. No.

17 Q. They're used in response to individual conduct?

18 A. Yes, an act of aggression.

19 MS. SHEFFIELD: I don't have any further questions.

20 Thank you.

21 THE COURT: Thank you.

22 You may step down.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Do you want this witness to be excused?

25 MS. SHEFFIELD: Yes, Your Honor.

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1 THE COURT: Any objection?

2 MR. MERRITHEW: No objection.

3 THE COURT: Before you step down, please pull the
4 little booty off and throw it away, wipe down the area.

5 THE WITNESS: Will do. (Complies.)

6 THE COURT: And then you can throw the wipe away as
7 well.

8 You can leave that right there. We'll get that back
9 to the City.

10 Thank you. You are excused.

11 Call your next witness.

12 MS. SAFARIAN: Plaintiffs call Haley Dallas.

13 THE CLERK: Please raise your right hand.

14

15 HALEY DALLAS

16 called as a witness in behalf of the Plaintiffs, having been
17 first duly sworn, is examined and testifies as follows:

18

19 THE CLERK: And if you want to take one of these
20 booties and put it on the microphone, and feel free to wipe it
21 down again, if you'd like, but it was just wiped down, I
22 believe.

23 THE WITNESS: Okay.

24 THE CLERK: Thank you.

25 Please state your name and spell it.

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1 THE WITNESS: Should I keep my mask on?

2 THE COURT: You can take it off.

3 Before you do that -- we're going to get to your name
4 in a minute -- you should know that the person before you who
5 testified wiped everything down, but you should do so again
6 for your own benefit, if you'd like, before we begin with your
7 name and your testimony.

8 THE WITNESS: (Complies.)

9 Thank you.

10 THE COURT: Sure.

11 And you can take off your mask, and you can give us
12 your first name and your last name.

13 THE WITNESS: Perfect. My name is Haley Dallas.

14 And should I spell it?

15 THE COURT: Sure.

16 THE WITNESS: It's H-a-l-e-y D-a-l-l-a-s.

17 THE COURT: Thank you.

18 You may inquire.

19

20 DIRECT EXAMINATION

21 BY MS. SAFARIAN:

22 Q. Good afternoon, M. Dallas. How old are you?

23 A. I'm 25 years old.

24 Q. And prior to the pandemic, what was your professional
25 occupation?

Dallas - D

1 A. I was in college for environmental economics and natural
2 resource management.

3 Q. And, briefly, were you present at the protest outside the
4 PPA building on June 30th?

5 A. Yes.

6 Q. And why were you there?

7 A. To protest police brutality against our black and brown
8 community members.

9 Q. What was the crowd gathered at the PPA doing?

10 A. When the crowd arrived at the PPA, we were chanting and
11 speaking to officers.

12 Q. Did anything stand out to you at the beginning of the
13 protest?

14 A. Yes. This protest was very unusual to me, because usually
15 when we arrive at, like, the area or the building that we're
16 protesting, there isn't an immediate police response.

17 But this day, as soon as we arrived, there was
18 officers waiting for us in a semicircle around the building in
19 full riot gear. So this was highly unusual, and it seemed
20 like in anticipation of violence.

21 Q. What happened next?

22 A. Well, after protesters continued to chant for a little,
23 the police left the front of the PPB and went around the back
24 of the building to the west side and then formed a line across
25 Lombard and began bull rushing tactics to push the protesters

Dallas - D

1 east on Lombard.

2 MS. SAFARIAN: Mr. Chavez, at this point, if you
3 could please queue up Exhibit 15X.

4 BY MS. SAFARIAN: (continuing)

5 Q. Before we -- I'll ask you a few questions about a short
6 video.

7 Prior to the police officers lining up on Lombard,
8 did you hear any announcements?

9 A. No, I did not hear any announcements prior to that.

10 Q. And what kinds of sounds were you hearing?

11 A. Chanting, mostly chanting and yelling from protesters. I
12 guess you can hear cars going by the surrounding streets, too.
13 But the crowd is really loud. The chants are supposed to be
14 really loud.

15 Q. Okay. So at this point, we have 15X queued up. We're
16 going to play this video, and I'm going to ask you one
17 question about it.

18 MS. SAFARIAN: Mr. Chavez, if you could just play the
19 video.

20 (A video is then played.)

21 BY MS. SAFARIAN: (continuing)

22 Q. So this is in double speed, but is that an accurate --

23 (A video is then played.)

24 MS. SAFARIAN: Pause it.

25

Dallas - D

1 BY MS. SAFARIAN: (continuing)

2 Q. M. Dallas, is that an accurate depiction of your testimony
3 of the crowd chanting outside the PPA building?

4 A. Yes.

5 Q. And you can actually draw on the screen. Can you circle,
6 which building is the PPA? Can you see it on there?

7 A. Yes. It's right here, this building (indicating).

8 Q. Thank you.

9 So my next question, not concerning this video,
10 before you noticed the officers lined up on Lombard, did you
11 see any of the protesters around you doing anything that, to
12 you, seemed like it was endangering the safety or the lives of
13 the people present?

14 A. No, not at all. Everyone was extremely friendly to each
15 other and very peaceful.

16 Q. And what about endangering the safety of the officers?

17 A. No. The crowd -- no.

18 Q. So you were describing what happened next. So go on.
19 What happened next?

20 A. Yeah. So after the officers lined up shoulder to shoulder
21 on the west side of the building on Lombard, they began to
22 push protesters east using bull rushing tactics. So the
23 police lined up, and then without -- or the police lined up,
24 and then as a group, without an announcement, started pushing
25 or walking east on Lombard and ordering protesters to

Dallas - D

1 disperse, but they did this in an extremely, like, violent and
2 chaotic manner.

3 Officers would take their batons and actually
4 physically push people forward if they weren't walking fast
5 enough. Officers would also just -- continued to just, like,
6 rough people up. They would grab people's backpacks and push
7 them around, maybe push them to the ground and let them get up
8 and keep going and push them again.

9 There was a lot of, like, intimidation and violence
10 going on, just police really being rough and pushing
11 protesters forward if they didn't deem them walking fast
12 enough.

13 I also saw police, like, in my mind -- and I remember
14 thinking this at the time, it's extremely ableist, because
15 protesters who can't walk quickly enough, who can't, like,
16 keep up with the crowd, would be targeted by the police.

17 So I saw one woman who was actually right behind me
18 or right beside me, fell back a little bit, like behind the
19 crowd. And a policeman pushed her over so that she was lying
20 flat on the ground, with her face on the asphalt, and was on
21 top of her. And then another police officer joined him and
22 then another and another, until there were actually four
23 officers on top of this woman.

24 I also saw police officers steal people's bikes and
25 personal belongings, without detaining or arresting them.

Dallas - D

1 And, yeah, I think that's it. But, yeah, a lot of -- mostly
2 violence with batons and pushing protesters forward, using
3 their personal effects, like backpacks and bikes and things.

4 Q. And did you follow police orders to move east?

5 A. Yes. I moved east on Lombard with the rest of the crowd,
6 hands up.

7 Q. And did you walk or run?

8 A. I walked.

9 And this is really important for protesters.
10 Everyone walks. And, in fact, protesters that evening, as
11 well as on almost all of the protests, when police are pushing
12 protesters, they were chanting -- we were chanting together,
13 "Walk. Don't run."

14 And this is really intentional, to make sure, A, the
15 people I talked about before, like protesters maybe with
16 mobility impairments, those who are using wheelchairs or
17 mobility aids, need to be able to keep up with the group so
18 they're not unfairly targeted by police, as well as if the
19 protester or if the whole -- if all of us begin to run
20 simultaneously, it's extremely dangerous, because protesters
21 can fall and get trampled. So it's really crucial that we
22 walk slowly and purposefully to maintain individual and group
23 safety.

24 So, yes, protesters were walking.

25 Q. And did you see officers using any -- any weapons other

Dallas - D

1 than the batons?

2 A. Yes. I saw officers use multiple weapons throughout the
3 evening, including munitions, which I assumed to be pepper
4 balls, based on the sound, as well as pepper spray and CS gas
5 at the end of the evening.

6 Q. So let's talk about the impact munitions first.

7 Did you see impact munitions used during the first
8 push?

9 A. Yes, like at the -- towards the end of the first push, I
10 saw officers use impact munitions on the crowd. The crowd had
11 kind of slowed, and it wasn't moving as quickly, and some of
12 the protesters had stopped to face the police again.

13 And when the police saw that, they opened fire on
14 protesters with what I'm assuming were pepper balls and kind
15 of sprayed the front line of protesters with pepper balls, so
16 kind of like a left to right, anyone in the front line was
17 going to be hit.

18 And that was the first time I saw them. That was
19 the -- I think that was the most, if not tied for the most
20 munitions I saw in, like, one spurt at that time.

21 Q. So let's talk about your vantage point. Where were you
22 standing in relation to the munitions that you saw?

23 A. Yeah, I was actually also in the front of the crowd. I
24 was, like, maybe one or two people back from the immediate
25 front line. And then I was on the southernmost side of

Dallas - D

1 Lombard.

2 Q. So in that video, would you have been on the same side of
3 the street as the PPA?

4 A. Yeah.

5 Q. Prior to you noticing the impact munitions, have you been
6 observing -- had you been observing the police officers in
7 front of you?

8 A. Yes. Yeah.

9 At the time, like during the first bull rush, I was
10 actually walking backwards with my hands up, so I could
11 maintain, like, a line of sight on the police officers, so I
12 didn't get pushed with a baton or whatever, brutalized in any
13 way.

14 Q. And did you see if anyone was hit by the munitions?

15 A. Yes. I saw multiple people being hit with munitions,
16 probably more than 10.

17 Q. How could you tell?

18 A. Because when the protesters were hit with munitions, they
19 would -- many would let out, like, a small yelp. I saw two
20 people beside me actually hit with munitions. I watched one
21 woman get hit. She let out, like, a small scream, like a
22 startled yelp. I saw protesters grab the areas that they had
23 been hit.

24 And then I saw protesters, like -- well, I
25 guess -- usually people were hit, like, on their lower

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1 extremities, and so I would see them limping away and calling
2 for a medic. And calling out for a medic is a protester's way
3 of saying, "I need a street medic. I need medical
4 assistance." So I saw them exit the crowd and go over to
5 street medics, yeah, to have their injuries checked out.

6 Q. And did you see any of the people who you saw hit with
7 munitions subsequently get arrested?

8 A. No. I saw nobody get arrested who was hit with munitions.

9 Q. And out of the people you were able to see in the moments
10 prior to you noticing they were hit with munitions, could you
11 tell what they were doing?

12 A. Yes. There was the woman that I mentioned earlier, who
13 was standing right next to me, was standing right next to me
14 and chanting.

15 Q. Did you see any of the people who you saw hit with
16 munitions doing anything in the moments prior that you thought
17 put the lives or safety of the people or officers at risk?

18 A. No, not at all.

19 Q. Did you see officers use any other type of weapons that
20 night?

21 A. Yes. As I mentioned before, I saw officers use pepper
22 spray as well as CS gas.

23 Q. So let's talk about the pepper spray. Describe what was
24 happening.

25 A. Yeah. So I saw pepper spray used several times throughout

Dallas - D

1 the evening to target individual protesters. The incident
2 that I saw most clearly was a woman who was standing close to
3 me in the front line. And an officer had grabbed her
4 backpack, and she was pulling her backpack away from the
5 officer, and the officer sprayed her in the face with pepper
6 spray in order to prevent her from taking her personal
7 belongings back.

8 Q. Had you seen that woman take any weapons or anything
9 concerning out of her backpack?

10 A. No, not at all. She was just wearing her backpack on the
11 front of her, likely to guard from being hit with munitions.

12 Q. And when you saw the pepper spray being deployed against
13 that woman, could you tell if anyone else around in the crowd
14 was affected by it?

15 A. Oh, yes. I saw several people around her immediately
16 affected and even incapacitated by the pepper spray.

17 Q. And how could you tell that was the effect? Describe what
18 the people were doing.

19 A. Yeah, it's extremely obvious. People immediately go from,
20 like, standing upright, looking around, to hunched over,
21 usually crying out in pain, snot, tears, vomit, spit coming
22 out of their eyes and face.

23 And, again, usually they're, like, clutching their
24 face. They're screaming for help. And like I mentioned
25 before, protesters would scream for a medic and then usually

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1 be led -- or I saw some protesters try to stagger themselves
2 out of the crowd, and I saw some protesters be led by others
3 who were either not as affected or not as badly affected out
4 of the crowd to seek medical attention.

5 Q. And out of the people who were around the woman who was
6 sprayed, had you seen if any of those people in the moments
7 prior were doing anything that put the lives or safety of the
8 people around you at risk?

9 A. No, nothing.

10 Q. So we've talked specifically about munitions and pepper
11 spray. Can you briefly describe what happened throughout the
12 rest of the time you were there?

13 A. Yeah. So it was -- it was very similar to the first
14 portion, but just again and again, like police would rush
15 forward and push protesters forward, and that always ensues a
16 bit of chaos.

17 And then once protesters kind of gain their ground
18 and understand what's going on, they slow to -- to a line to,
19 like, stand off against the police and chant at them. And
20 then the police will -- or the police would use munitions or
21 pepper spray, and the pattern would begin again, just pushing
22 protesters down east on Lombard.

23 And then about an hour, hour and a half after the
24 first bull rush, they declared a riot and released -- or
25 deployed an immense amount of CS gas. It was more CS gas than

Dallas - D

1 I had seen prior, maybe say for the first couple days of
2 protests. It was -- it was extremely alarming. And I don't
3 think that anyone was prepared to be faced with that much gas.

4 Q. So, M. Dallas, you've described being in the crowd with
5 police officers using batons, pepper spray, munitions against
6 the crowd that you were in.

7 Can you please tell us, how did it feel to be
8 standing there and having the police officers come at you and
9 the crowd in that manner?

10 A. It's extremely terrifying. It's truly mortifying. Just
11 because of the randomness and indiscretion with which the
12 police officers use violence, you never can feel safe in a
13 peaceful protest, even if you are -- even if you're just
14 standing there and being peaceful, not even chanting.

15 So I always feel an extreme amount of fear being in
16 these protests, because I never know if this is -- like I
17 never know if this is the protest that my shoulder is going to
18 get dislocated because a policeman grabs my backpack. I never
19 know if this is the time that I get hit by a flash-bang or
20 have permanent eye damage due to CS gas.

21 It's really horrifying. And I think it follows
22 you -- or I know that it's followed me outside of the
23 protests, too. I have nightmares. I have a huge amount of
24 anxiety. I really don't feel safe in this city anymore
25 because these officers, whose job it is to serve and protect

Dallas - D

1 me, have brutalized me and my friends, both on that night and
2 many others.

3 I don't feel I -- I don't feel like -- I feel nervous
4 and uncomfortable every time I pass a police officer in this
5 city. And I know, for me, there will be lasting emotional
6 trauma and ramifications because of the violence that
7 PPA -- or, sorry, that PPB has inflicted upon me and other
8 protesters.

9 Q. And so, M. Dallas, if it's this terrifying and this
10 difficult for you to be in that crowd, why didn't you just
11 leave?

12 A. I think because that's exactly what they want. You can
13 tell that the way that they're random, and the random way they
14 use munitions, just to, like -- and especially on protesters
15 that are not doing anything is an intimidation tactic, or at
16 least that feels very obvious to me. And they're trying to
17 intimidate protesters out of protesting and out of using our
18 First Amendment rights.

19 And so just -- just to leave these protests because
20 of police brutality won't get us any -- any closer to police
21 reform and ending police brutality. So I feel an obligation
22 to be there for my -- for my black and brown community members
23 and friends. I don't want to see them killed in the streets
24 anymore.

25 I also know that if I leave the protest, not everyone

Dallas - X

1 will leave the protest, and I risk putting, again, like my
2 black and brown community members and friends who are still
3 there at further risk of harm, because if there are less
4 people out there, if we don't stand together against police
5 violence, it's way more likely that individuals will be
6 targeted and brutalized.

7 Q. Thank you.

8 MS. SAFARIAN: No further questions.

9 THE COURT: Cross-exam.

10 MR. YAMACHIKA: Thank you, Your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. YAMACHIKA:

14 Q. Good afternoon.

15 I'm hearing Ms. Safarian address you as M. Dallas.

16 Is it Mx. or --

17 A. Just M. Dallas is fine.

18 Q. M. Dallas, my name is Rob Yamachika, and I'm a deputy city
19 attorney and I represent the City in this case.

20 You gave a declaration related to this case; is that
21 true?

22 A. Yes.

23 Q. And in that declaration, in paragraph 7, you say that you
24 started off at Peninsula Park; is that correct?

25 A. Yes.

Dallas - X

1 Q. And would you characterize the gathering at Peninsula Park
2 to be a peaceful protest?

3 A. Yes.

4 Q. And were there any police present at that event?

5 A. I do not think so.

6 Q. Okay.

7 A. But I cannot say for certain, especially considering
8 undercover police.

9 Q. And then it's my understanding that you marched to the PPA
10 building on North Lombard Street; is that right?

11 A. Yes.

12 Q. And would you consider the protest event that took place
13 on North Lombard at the PPA building to be a peaceful protest?

14 A. Yes.

15 Q. Okay. And, obviously, there was a police presence at that
16 time at the PPA building, correct?

17 A. Obviously.

18 Q. And you said when you arrived, you were surprised to see
19 the PPA building to be -- I don't know if you said
20 "encircled," but there were officers in front of the building?

21 A. Yes, officers in riot gear encircling the front of the
22 building.

23 Q. I might have missed some of it. How did you describe
24 them? You said they were aggressive or they were going to do
25 something aggressive?

Dallas - X

1 A. Anticipating violence.

2 Q. Okay. So you thought they were anticipating violence.

3 Did it also appear to you they were protecting the
4 PPA building from damage?

5 A. Sure.

6 Q. Okay. And then you describe that out of nowhere, the
7 officers formed a line and bull rushed.

8 A. Uh-huh.

9 Q. Is it your testimony that you didn't hear any directions
10 from the LRAD to say move to the east or to disperse --

11 A. That's true.

12 Q. -- before the bull rush happened?

13 A. That's true.

14 Q. Okay. Are you aware of the restrictions on impact
15 munitions that this Court issued in the TRO?

16 A. Yes.

17 Q. And are you aware that bull rushes are not covered by that
18 TRO?

19 A. Yes.

20 Q. And then I think you testified a little bit about this
21 today, as well as in your declaration. It says -- actually,
22 let me give you some context here.

23 So paragraph 9 says, "Out of nowhere, the police
24 officers started forming a line across Lombard. They bull
25 rushed us east on Lombard before they started throwing

Dallas - X

1 munitions."

2 Paragraph 10: "Then they started indiscriminately
3 shooting munitions into the crowd. There was a line of
4 officers 20 to 30 feet away from the retreating crowd of
5 protesters. I think one protester walked a few feet toward
6 them, and the officers started firing off into the crowd."

7 I think I heard you testify that there were officers
8 firing from left to right with pepper balls; is that right?

9 A. Yes. I mean, maybe not left to right, but, again,
10 indiscriminately into the front line of protesters from the
11 left to the right. I don't --

12 Q. It could have been right to left?

13 A. Yeah, sure.

14 Q. It could have --

15 A. But across the entire front line of protesters.

16 Q. So I think you might have said they were spraying pepper
17 balls across the front line.

18 A. Uh-huh.

19 Q. Have you watched any video of this event?

20 A. Yes.

21 Q. Do you see that happen on any of the videos that you've
22 watched?

23 A. I have -- I mean, I've watched videos where you can
24 clearly hear officers spraying pepper balls into the crowd.

25 Q. Okay. Do you -- now, when you say "pepper balls," are you

Dallas - X

1 aware of who carries pepper ball munitions, which agency
2 carries pepper ball munitions?

3 A. No, I'm not aware of what specific agencies carry what
4 specific munitions.

5 But as I said before, I'm just assuming they're
6 pepper balls based on the small size of them and the fact
7 that I saw people -- I saw, like, people's wounds afterwards,
8 and they're very comparable to what we've seen from pepper
9 balls.

10 Q. Have you played pepper ball yourself, like, you know --

11 A. Paintball?

12 Q. Sorry. Paintball, right.

13 A. I've never played paintball. But I have been hit with a
14 pepper ball.

15 Q. Are you familiar with what a paintball launcher looks
16 like?

17 A. A paintball gun?

18 Q. Yes.

19 A. Yes.

20 Q. Can you describe for me what a paintball gun looks like?

21 A. I mean, yeah, it looks like a gun with, like, a long tube
22 out in the front. And there's, like, an air canister at the
23 bottom and, like, a paintball holder canister up at the top,
24 and then, like, normal gun things, trigger --

25 Q. Sure.

Dallas - X

1 A. -- back stop.

2 Q. So it's got, like, this paintball hopper on the top? Is
3 that what you're saying?

4 A. Uh-huh.

5 Q. Did you see officers firing a munition with a paintball
6 hopper on the top?

7 A. I mean, I can't remember exactly if it had a paintball
8 hopper on the top. I'm saying that I saw officers using what
9 looked like guns to shoot munitions at peaceful protesters.

10 Q. And when the munitions impacted on these individuals, did
11 they leave any paint marks or any indications of being hit?
12 Did they have a color?

13 A. I -- I don't believe so.

14 Q. Okay.

15 A. I cannot be certain, though.

16 Q. So there was no pink paint, for instance?

17 A. Again, I cannot be certain of that.

18 Q. What about green powder paint?

19 A. Yeah. Again, I'm going to say I cannot be certain of
20 that.

21 Q. Okay.

22 A. But officers fired munitions at peaceful protesters,
23 regardless of what the munitions were.

24 Q. And you said you were standing towards the front of the
25 line when this happened?

Dallas - X

1 A. Yes.

2 Q. And were you struck by any of these pepper balls?

3 A. Not that evening.

4 Q. And you said a woman next to you was; is that right?

5 A. Yes.

6 Q. Okay. In your declaration, it says, "I was not personally
7 shot, but I was closest to the officers and saw them shooting
8 into the crowd behind me."

9 Did you see what the people behind you were doing?

10 A. I mean, no. When the people were behind me, I did not
11 have eyes on them.

12 Q. Right.

13 And so do you know what they were doing? For
14 instance, could they have been throwing objects at the police?

15 A. I know they could not have been throwing objects at the
16 police, because they would have gone over my head and I would
17 have seen the objects enter into the police line.

18 Q. Is it your testimony that you saw no one struck by a
19 pepper ball that was throwing something at the police?

20 A. Could you repeat the question?

21 Q. Yeah. My question is: Did you see the police shoot
22 anyone with a pepper ball that was throwing something?

23 A. No.

24 Q. They were all just standing there peacefully?

25 A. Yes.

Dallas - X

1 Q. Okay. You said that people were pushed with batons. Were
2 you personally pushed with a baton?

3 A. No.

4 Q. Is that because you were walking east as you were
5 directed?

6 A. No. It's because I'm able-bodied, and I was able to keep
7 up with the crowd.

8 Q. Okay. And are you aware that baton usage is not subject
9 to this TRO?

10 A. Yes.

11 Q. What about --

12 A. I just think it's a good indicator of how police officers
13 treat protesters, peaceful protesters.

14 Q. Okay. And are you saying that the people that remained in
15 the street -- are you saying that the officers -- well, let me
16 back up.

17 Were the batons used on people that were refusing to
18 move to the east?

19 A. I can't say for certain.

20 Q. Okay.

21 MR. YAMACHIKA: I think I'll stop there, Your Honor.
22 Thank you, Ms. -- or M. Dallas.

23 THE COURT: Redirect?

24 MS. SAFARIAN: Nothing further, Your Honor.

25 THE COURT: M. Dallas, if you wouldn't mind, you can

Dallas - X

1 pull the little booty off of the microphone and throw it away
2 for me, and then take a wipe and clean up the area you were
3 just at.

4 THE WITNESS: Sure. (Complies.)

5 THE COURT: Do you want this witness to be excused?

6 MS. SAFARIAN: Yes. Nothing further from us.

7 THE COURT: Any objection?

8 MR. YAMACHIKA: No objection.

9 THE COURT: You are excused. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. BRUGGEMEIER: Plaintiffs call Eric Greatwood,
13 Your Honor.

14 (The next witness takes the witness stand.)

15 THE COURT: When you step up there, you can take a
16 moment and wipe everything down. Then we'll get to the
17 formalities. It's been wiped down by the prior witness, but
18 you may want to take a minute and do it yourself.

19 Also, Mr. Greatwood, I'm going to ask you to do me a
20 favor of putting a little bonnet on top of the microphone
21 there. There should be a little package to your right.

22 And then you're welcome to remove your mask.

23 Raise a hand and be sworn, please.
24
25

Greatwood - D

ERIC GREATWOOD

called as a witness in behalf of the Plaintiffs, having been first duly sworn, is examined and testifies as follows:

THE CLERK: Please state your name and spell it.

THE WITNESS: My name is Eric Greatwood, E-r-i-c G-r-e-a-t-w-o-o-d.

THE COURT: You may inquire.

MR. BRUGGEMEIER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BRUGGEMEIER:

Q. Mr. Greatwood, thank you for coming in.

Can you tell us what your occupation is?

A. I'm currently service-connected disabled from the United States Air Force.

Q. And can you just briefly tell us about your military career.

A. I joined the Air Force right out of high school, and I spent my time as a mechanic on the flight line, not working on planes, but working on the tools that the planes needed, like generators, air conditioners, hydraulics servicing.

The microphone is ringing.

So I spent about four years in, four and a quarter active. Then I did about four years in the reserves

Greatwood - D

1 afterwards.

2 Q. Okay. So we'll shift to questions about your involvement
3 at protests. Can you describe what your participation in
4 protests has been?

5 A. So I was watching the protests via Internet, Facebook,
6 livestream, over the George Floyd protests that were
7 happening. I saw the craziness online, found out it was in
8 Portland, watched it for a few nights, and found that what I
9 was reading and seeing wasn't exactly telling a story.

10 I couldn't exactly see what was happening downtown,
11 so I went to go offer that myself. And I just wanted to show
12 the people around me, but it ended up being a little bit more
13 than that.

14 So I basically built a pole camera system, which
15 would bring the camera up about 20 feet, if necessary, and
16 livestream that. And I wanted to get down -- and so that way
17 you could see above everybody's heads on both sides. And so
18 what I would do is I'd go down and I'd film basically the
19 center line in between the police and the protesters, so that
20 way I can get basically the full story of what was happening.
21 I didn't think it was being seen. I thought there was a lot
22 of sway on both sides.

23 Q. So when you're answering, I'll ask you to just kind of
24 slow down and take your time, just for the court reporter's
25 sake.

Greatwood - D

1 A. Okay.

2 Q. So you saw the livestreams online, and you were thinking,
3 "I want to see something that kind of shows all of the things
4 going on." Is that what you're saying?

5 A. Yeah. I feel like the whole story wasn't being shown. It
6 was just hard to see.

7 Q. Okay. And so when did you start going out with -- with a
8 video camera on a pole and filming?

9 A. My first -- the first day that I went down was June 4th,
10 just to observe what was happening, and I did not video
11 record. And I didn't realize that there was kind of two
12 sections that was happening, with the marches and what was
13 happening downtown. So I saw the marches were happening; and
14 then I went home, found out that things got a little bit
15 crazier in the night.

16 So June 5th, I went and purchased the cameras and
17 decided to film starting on June 5th.

18 Q. Okay. And now we'll turn to June 30th. Did you
19 participate or attend and film at a protest on June 30th on
20 Lombard?

21 A. I did.

22 Q. Okay. And at the point that you -- by June 30th, how many
23 protests do you think you had been to?

24 A. From June 5th to the 30th, I think I might have took two
25 personal nights.

Greatwood - D

1 Q. Okay. So you were there probably 23 of those 25 nights?

2 A. I would say so, yes.

3 Q. Okay. And on June 30th, how did you -- how did you join
4 the protests or when did you join the protest at PPA on
5 Lombard?

6 A. I was intending to go down to the Justice Center here
7 downtown in Portland, and I didn't understand where the
8 location had been moved for -- I wasn't up to date on where
9 they were or anything. And so I checked the livestreams, and
10 people were down at the Lombard Street PPA location; and I
11 believe I headed down there about 9:30 that night.

12 Q. And can you just briefly describe the scene that you saw
13 when you -- when you arrived? Where was the protester crowd?
14 Where was the police?

15 A. I parked my car over by the Shell gas station on Lombard.
16 I got out of the car, got my gear ready, headed up to the
17 line. When I got there, the protesters were already taking up
18 both lanes of the road. Traffic seemed to be blocked off.

19 And then I made my way through the crowd, about 30 or
20 so feet, where there was police on the south end of -- south
21 end of the sidewalk. And I was on the north end when I got
22 there.

23 Q. Okay. So at that point, you didn't see a line of police
24 across the street facing the crowd of protesters; is that
25 right?

Greatwood - D

1 A. That is correct.

2 Q. Okay. And there was -- are you familiar with which
3 building the PPA building is?

4 A. I'm aware.

5 Q. Okay. And how far away was the crowd from that PPA
6 building?

7 A. Probably about 25 feet. I mean, I'm guesstimating here.

8 Q. Okay. But not right in front of it?

9 A. No.

10 Q. Down the block a bit?

11 A. Not directly in front of it, no.

12 Q. So you arrived. You see there's no police line. When did
13 the police come back out?

14 A. I must have been there just for maybe five minutes, I want
15 to say. It was about seven minutes into my stream, which I
16 started the stream when I left my truck and walked up.

17 So it was about seven, eight minutes in when the
18 police created a line across the street. And they were saying
19 that they were making a lawful -- taking lawful action, and
20 they're arresting somebody on the north end of the street
21 and -- yeah.

22 Q. So when they formed a line, you are behind the police
23 line. So it's you, then the police line, then the crowd; is
24 that right?

25 A. That is correct.

Greatwood - D

1 Q. And then you said earlier that you liked to be kind of in
2 between the crowd and the police line to get the best vantage
3 point; is that right?

4 A. Exactly.

5 Q. So is that what you tried to do next?

6 A. Yes, that's what I tried to do.

7 Q. And what happened, briefly, to try to get to that point?

8 A. So I was going to make my way to the center line, but
9 there was the arrest being made in the line, so I was kind of
10 observing the situation to see how I can get around them.

11 Some more police officers came closer to me, and I
12 asked if I could make my way to the front. And that's when a
13 police officer shouted out and said, "Greatwood, get back,"
14 referring to me.

15 And at that point I didn't know that they knew my
16 name exactly. And so I -- I've never said anything negative
17 or mean to the police. I've always respected them and
18 respected every individual that's out there. So I kind
19 of -- it just kind of shocked me a little bit.

20 And then they -- they said, "Greatwood, get back.
21 Your pole is high enough to get a viewpoint over there." I
22 was like, "Oh, okay."

23 So I turned around, and they used their batons
24 horizontally to push me and my backpack for about 15 feet. I
25 was walking really fast, too. They were shoving me, like,

Greatwood - D

1 further, like I -- yeah, they were pushing on me pretty hard.

2 Q. So that was surprising, that they knew who you were?

3 A. Oh, yeah. The hairs on my arm stood up. Like, I was just
4 like, what? Just he was kind of -- kind of like -- there was
5 like a smirk kind of attitude to him. And so, like, I didn't
6 know, like, why. Because I just feel like I've been -- I've
7 been very professional about the situation. So I didn't
8 understand why.

9 Q. And you said that you don't say anything, you have respect
10 for the police and you don't say anything. So when you go out
11 and film, do you chant?

12 A. No.

13 Q. You don't yell anything?

14 A. No.

15 Q. You don't throw anything at police?

16 A. Not once.

17 Q. Okay. You're just there to film?

18 A. Yeah, just there to film. I'm labeled -- I mean, I put on
19 press badges, when people said you need to be labeled as that,
20 and so I made myself very known.

21 I mean, I have my 20-foot pole. I have a big sign
22 that I wear. It's a piece of cardboard that says, "Veteran
23 For Peace," because that's what I'm about, is for peace. So
24 that's how they knew who I was, a 20-foot pole.

25 Q. That seems like that would be pretty recognizable?

Greatwood - D

1 A. Really, really obvious.

2 Q. So you start trying to walk. The police are shoving you
3 in the back with a baton.

4 When do you eventually get around, or do you
5 eventually get around the police line and get into the --
6 between the crowd and the police?

7 A. I recognized that the police were advancing -- well, so, I
8 made my way around the Heavenly Doughnuts. And the police had
9 already been pushing the crowd a little bit further back. I
10 made my way up there. The police that were originally pushing
11 me were engaged in the crowd, so I was fine hanging back a
12 little bit.

13 They keep pushing people, and eventually they make
14 another stop. There's a hole on the south side, in between
15 the buildings and the police, and so I just walk over there
16 and get my way -- get my position back to, like, the center
17 line between the police and the protesters, and I started
18 filming there.

19 Q. Did any other officer impede you, your path, to get where
20 you wanted to go anymore?

21 A. Yeah. On my way to the other side, there was the vehicle
22 that had what people call the LRAD loudspeaker on top of the
23 vehicle. I was just walking towards the police. I stayed
24 back. I gave them all the space that they needed.

25 But the vehicle kept cutting me off, almost hitting

Greatwood - D

1 me. I -- it's really hard to get my -- like, to start me up
2 and -- about a situation like that, because I'm very aware.
3 But they were personally blocking me with an SUV, and I
4 thought that was weird.

5 Q. And so when you said that they cut you off, was that just
6 one time?

7 A. It was, I believe, four or five times. I was walking to
8 the left side, and they were using the loudspeaker as they
9 were doing it. And you can see it on camera, too. They just
10 weaved in front of me. I paused. I went around to the other
11 side.

12 And, mind you, I don't move fast, because I'm not
13 trying to create a situation in which somebody should worry
14 about me. Usually I'm walking around with my hands in the air
15 so that I'm seen as a non-threat.

16 And so they're weaving in front of me, making sure
17 that I can't get in front of them. Eventually, he almost hits
18 me and pins himself to the curb. And then the police were
19 making an arrest in front of the SUV, and so that's when I was
20 able to get around.

21 Q. Okay. So you go around the police line, and you end up in
22 that spot where you like to be, between the crowd and the
23 police line?

24 A. Exactly.

25 Q. At that point, you know, what are you seeing? What are

Greatwood - D

1 you seeing from the police? What are you seeing from the
2 crowd?

3 A. I felt things were relatively calm compared to other
4 nights. I didn't notice it until rewatching my videos that
5 there was about three or four rubber bullet sounds, which is a
6 very distinct sound, that were happening when I was -- when I
7 was trying to make my way back over to the other side, but
8 that's because my focus was on getting back to the other side.
9 But I didn't really notice a whole lot of activity. I feel
10 like it was pretty calm, given the circumstances.

11 Q. So you get to the place that you want to be to film. It
12 feels calm. Do you stay in one place? Do you just kind of
13 roam around?

14 A. I made my way to the south side of the street initially.
15 I must have filmed for a couple, few minutes. And then there
16 was a big gap, maybe 15, 20 feet, between the protesters and
17 the police. And so I just walked right across that to the
18 other side of the street, near the gutter. And so I just
19 filmed there for another few minutes.

20 Q. And were the police moving the crowd? Was everyone at a
21 standstill?

22 A. I believe that they advanced forward one more time, I
23 believe.

24 Q. Okay.

25 A. Yeah.

Greatwood - D

1 Q. So you kind of walk around and you get to a place on the
2 north side of the street. Where are you in relation to the
3 crowd and the police line?

4 A. I'm in front of the protesters, more on the protester
5 side, with the police in front of me, maybe a couple
6 bystanders that have a good bit of distance between them,
7 maybe to the side of me.

8 Q. Okay. And which direction are you facing?

9 A. I'm facing west down Lombard Street.

10 Q. So towards the line of police; is that right?

11 A. Towards the police.

12 Q. Okay. And can you describe what you were doing in the
13 moments before you are shot?

14 A. I was just filming. Nothing crazy unusual for -- given
15 the night. I felt like it was still relatively calm. And the
16 police started throwing out smoke grenades. And one of the
17 grenades didn't go off.

18 They're like metal cylinders, and they'd break off
19 into three pieces, and then they'd spark up and flare. Well,
20 this one, they ended up tossing it out, and it ended up
21 staying together.

22 And wanted I want to analyze it, so I took a couple
23 steps to pick it up, and I was hit in the groin with what I
24 believe was a military munition.

25 Q. So you're saying that these smoke canisters usually split

Greatwood - D

1 into three pieces. Are you familiar with the term
2 "Triple-Chaser"?

3 A. I am not familiar with that term.

4 Q. Okay. So they split into three pieces, and usually each
5 of those pieces starts smoking; is that right?

6 A. Uh-huh.

7 Q. And when it rolls towards you, it's not smoking, right?

8 A. Not at all. It's just completely -- nothing -- it's just
9 solid.

10 Q. So you thought, "This is my chance to look at this"?

11 A. Yeah. I've never seen one up close.

12 Q. Okay. And so where -- what position is your body in when
13 you're shot?

14 A. Facing the police.

15 Q. Okay. And are you -- are you standing upright? You're
16 bending down? Have you touched the canister yet?

17 A. I actually saw -- I have my camera pole in my left hand.
18 And the cables on it, going to the camera on my backpack,
19 actually are really tight, so I have to really slowly bend
20 down to pick it up. And I didn't even make it to where I
21 could touch it before I was hit.

22 Q. So you don't even touch it yet, and you're shot. What
23 does that feel like?

24 A. The only pain that I can even say comes close is,
25 actually, I had sciatica of my right leg and my lower spine

Greatwood - D

1 completely numb, and that's the worst pain I've ever felt in
2 my life. And this was up there, the same grade of pain.

3 I lost vision. I felt like my eyes were going to
4 explode out of my head. It took the wind out of me. I
5 couldn't tell where I was. I'm trying to hold it together,
6 because I'm not trying to -- I'm there for a purpose. I'm not
7 there to be groaning in pain. But the pain was just
8 overwhelming, and I couldn't help myself but to just groan and
9 just really vocalize, because it was just -- my system was
10 doing that. I couldn't hold it back.

11 I couldn't tell what to do next. I was shaking in
12 pain, and I know that -- I didn't know until later that it had
13 broken skin.

14 Q. So you got shot in the groin. It broke skin?

15 A. Uh-huh.

16 Q. And you're saying that this is the worst pain that you've
17 ever felt; is that right?

18 A. Yeah. It's adjacent to the sciatica pain that I've had,
19 which is the most excruciating pain that I've ever experienced
20 in my life.

21 Q. And how long were you in that amount of pain?

22 A. I thought I was going to fade off. I was in pain through
23 the rest of the evening, direct still hurting pain for the
24 rest of the evening. I just -- just the recovery period was
25 extensive and extremely painful. It wasn't easy, basically.

Greatwood - D

1 If you imagine having broken skin in a sensitive area
2 where it constantly catches on fabric, and like getting a scab
3 that catches on fabric, and it's constantly being ripped out,
4 like 10 times a day for a whole month -- the bruising was
5 insane.

6 I had to -- for the first week, I had to urinate in a
7 shower, because I couldn't make a solid stream. It was -- it
8 was definitely one of the worst things I've ever had to deal
9 with.

10 Q. And I know that it's uncomfortable to talk about this with
11 a room full of people, but were you -- you said "groin." Were
12 you shot in the penis?

13 A. In the tip of the penis.

14 Q. And it broke the skin and led to massive bruising?

15 A. Yes, and a cyst for a while, and I'm still getting that
16 serviced by doctors.

17 Q. And so that injury is still affecting you nearly four
18 months later?

19 A. Yeah. The pain is no longer there, but the scarring is
20 permanent. The shape is not the same. It's very disturbing
21 to look at. And I just -- it's just uncomfortable.

22 Q. I understand.

23 MR. BRUGGEMEIER: I don't have any other questions,
24 Your Honor.

25 THE COURT: Cross-exam.

Greatwood - X

1 MR. YAMACHIKA: Thank you, Your Honor.

2
3 CROSS-EXAMINATION

4 BY MR. YAMACHIKA:

5 Q. Good afternoon, Mr. Greatwood. My name is Rob Yamachika.
6 I'm a city attorney for the City of Portland.

7 I want to ask you, prior to you being hit by the
8 impact munition that you've described, had you seen other
9 protesters who had been shot with impact munitions when they
10 bent down to pick up smoke canisters?

11 A. Not once.

12 Q. I'm sorry. Not once?

13 A. I'm sorry. Can you repeat the question?

14 Q. Sure.

15 Prior to you being hit by the impact munitions --

16 A. That night?

17 Q. -- that night, had you seen other protesters who had been
18 shot with impact munitions when they bent down to pick up
19 smoke canisters?

20 A. I had not seen that situation, no.

21 Q. Had you seen other protesters hit with impact munitions
22 when they threw back objects?

23 A. On that night, no.

24 Q. Well, had you seen it on a night before that?

25 A. I've seen police fire at people who are at the front lines

Greatwood - X

1 just even, like, yelling. And they get hit with the pepper
2 ball munitions in the face, like just yelling, not really
3 doing anything. I've seen that.

4 Q. What I'm asking you is if you've seen officers deploy
5 impact munitions at people that were bending down to pick up
6 objects.

7 A. No.

8 Q. Okay. What about kicking smoke canisters, instead of
9 bending down to pick them up? Had you observed that?

10 A. Yes.

11 Q. And had you observed people being shot with impact
12 munitions when they kicked the canister?

13 A. Yes.

14 Q. And you saw that prior to you being shot in the groin on
15 June 30th, 2020?

16 A. I can't recall.

17 Q. Okay. Tell me again why you bent down towards the
18 canister.

19 A. To observe it, check it out.

20 Q. Let me ask you about your prior service in the Air Force.

21 Did you receive any firearms training in the Air
22 Force?

23 A. Yes, I did.

24 Q. What firearms training did you receive in the Air Force?

25 A. Basic training. There was the M-16 rifle that I was

Greatwood - X

1 trained with. It was just basic training.

2 Q. So just the M-16?

3 A. Uh-huh.

4 Q. It didn't have the grenade launcher on the bottom, the
5 M-203?

6 A. Negative.

7 Q. Okay. Had you seen a 40mm grenade launcher while in the
8 military?

9 A. Negative.

10 Q. Do you know what one looks like?

11 A. Yes.

12 Q. Any trainings on less-lethal munitions or weapons in the
13 Air Force?

14 A. No.

15 Q. How about chemical or biological agents?

16 A. No.

17 Q. Did you see what type of munition hit you?

18 A. No.

19 Q. But you think it was a 40mm; is that right?

20 A. Without a doubt. That's what the injury, the bruising,
21 the shape -- like I couldn't imagine it being something else
22 going that fast.

23 Q. Okay. Let me ask you this question. I take it you were
24 wearing pants or shorts, some type of leg covering?

25 A. I was wearing pants.

Greatwood - X

1 Q. Right.

2 Did the round leave any marking or paint or any type
3 of powder on your leg?

4 A. Negative.

5 Q. (Handing).

6 So just for the record, I'm handing you what I've
7 marked as Exhibit K. It's a series of photographs of various
8 impact munitions that the Portland Police Bureau uses.

9 If you could turn to the third page -- on the bottom
10 there, it's in small type. It says page 3 out of 11.

11 A. It's green.

12 Q. Yeah. So it says on it, "Direct Impact marking." Do you
13 see the one I'm talking about? It's got the actual -- the
14 full round, not just the projectile.

15 A. One, two -- okay. Yeah, I'm here.

16 Q. Does this appear to be what hit you?

17 A. If I were to estimate, that would be it.

18 Q. Okay. Let's flip to page 4. Do you see page 4?

19 And I'll represent to you that this is a 40mm green
20 marking round that's been fired and has hit something. And
21 it's got a crushable foam tip.

22 A. Okay.

23 Q. So that's why you don't see the actual semicircle.

24 A. Got it.

25 Q. And then I want you to look at page 5. That just kind of

Greatwood - X

1 looks like green Play-Doh or something.

2 A. I see it.

3 Q. So I'll represent to you that that's a green impact round
4 crushed foam top.

5 Did you have any green powder, paint, marking on your
6 pants?

7 A. I didn't analyze my pants, and I also had my pants on
8 using an ice pack afterwards, which was all wet, got the whole
9 area wet. My pants were soaking. So I don't know. The pants
10 were done and thrown away with. I didn't even look at them.

11 Q. So are you saying that this green marking could have
12 washed off your pants?

13 A. Well, I can't see the texture or what it would actually
14 leave on the pants. But that's just a piece. I can't tell.

15 Q. Sure.

16 Have you seen some of the videos in this case where
17 individuals were hit with green marking rounds?

18 A. Like the highlighter kind of stuff?

19 Q. Yes. So there's like a big green puff of smoke that goes
20 off when they get hit. Have you seen something like that in
21 the videos?

22 A. Not green, no, I have not.

23 Q. Okay. But you said with -- beyond a doubt, this is what
24 hit you?

25 A. Well, these rubber munitions. Like, I don't know which

Greatwood - X

1 one or -- I just recognize the shape. And there's -- I don't
2 know. You haven't seen the pictures from the doctor's or
3 anything like that?

4 Q. I have not seen the pictures.

5 A. It's like a sphere. It's like a sphere-specific scarring
6 that I have, and it's a perfect circle, about maybe an inch in
7 diameter. And then the bruising was another four inches. So
8 that's what I had left on me.

9 Q. Okay. Let me ask you to look at about page 11 of 11. And
10 I'll represent to you that this is what's called an FN 303
11 round.

12 A. Uh-huh.

13 Q. Is it possible that you were hit with something like this?

14 A. I don't think so. I recognize it. They seem a little
15 small.

16 Q. Okay. And then I don't have a picture of a pepper ball.
17 Do you know what a paintball looks like?

18 A. Yeah, I'm aware.

19 I mean, are these rounds, these pink ones right here,
20 are they the ones that have pepper, like, in them?

21 Q. So the pink one, that's the marking round that's pink.

22 A. Okay.

23 Q. If you look at the picture -- well, let's go to page 6.

24 Do you see how that one kind of has got more of an orange tint
25 to it?

Greatwood - X

1 A. Yes.

2 Q. That's the one that has got pepper --

3 A. Okay.

4 Q. -- or PAVA, I should say.

5 A. Okay.

6 Q. Why do you ask? Is that what you think --

7 A. Well, because I didn't have my mask on. And I know if
8 that one was to explode and they have pepper, I would breathe
9 it. That's the only reason I was asking.

10 Q. Okay. So did you smell pepper when you were hit in the
11 groin?

12 A. No, no.

13 Q. Did you see who shot the munitions at you?

14 A. No.

15 Q. Do you know -- could you tell me the -- could you
16 recognize the difference between a 40mm launcher versus an
17 FN 303?

18 A. If the FN 303 is the one that shoots the small -- the
19 pepper rounds we were just speaking of, well, yeah, those look
20 like a paintball gun. And these 40mms have, like, a grenade
21 launcher-style tube on the end of it with the CO2 cartridges.

22 Q. It's a bigger tube, right, a --

23 A. Yeah.

24 Q. -- 40mm?

25 A. It's a bigger tube.

Greatwood - X

1 THE COURT: One at a time.

2 BY MR. YAMACHIKA: (continuing)

3 Q. I think I was asking you, the grenade -- what you call the
4 grenade launcher, the 40mm launcher, that has a larger tube,
5 correct?

6 A. Yes.

7 Q. And I think you said the sound is unmistakable or
8 distinct. What does it sound like? Well, you said a rubber
9 bullet sounds very distinct.

10 A. It does. It's got like a suction tube kind of sound, like
11 a "thoonk," when it's being fired.

12 Q. Okay. Is it typically just one round being fired, versus
13 an FN 303, where you can hear a "pop, pop, pop"?

14 A. To my understanding, you can only fire one at a time.

15 Q. For the --

16 A. For the 40mm.

17 Q. Okay. That's my understanding, too.

18 So it's kind of breach operated, right? You put a
19 round in, you close it up?

20 A. Correct.

21 Q. Launch it, take it out?

22 A. That's my understanding, yes.

23 Q. Okay. I think you testified that you were kind of freaked
24 out that the police officer knew you by name; is that right?

25 The hairs on your arm stood up?

Greatwood - X

1 A. Freaked out -- more surprised, like, wow. You can see in
2 my videos my full reaction, "Wow, I can't believe that." And
3 then I went back to it.

4 Q. Okay. What's your handle that you broadcast? Is it
5 Greatwood or is it identifiable by your last name?

6 A. When I first started, I just used my first and last name,
7 said, "Hey, I'm streaming." And I had a cardboard cutout that
8 a friend made for me that just said "Veteran For Peace."
9 That's what everybody knew me as until Veterans For Peace, an
10 organization, found out about me, and we had a discussion. I
11 changed my name to "Veteran For Truth."

12 Q. Okay. Because they thought you were representing Veterans
13 For Peace or something?

14 A. No, they did not believe that I was. They just -- they
15 wanted there to be a chain or easily identifiable -- they
16 wanted us to be separate, or they wanted me to follow the
17 rules. And I wasn't like -- like, I was already doing my
18 thing. I didn't want to have to conform to their rules, so I
19 just changed out of courtesy.

20 Q. So when you first started -- is it livestreaming? I don't
21 know what the term is. Is it livestreaming or did you upload
22 it after you took it or --

23 A. It was livestreamed every time. I just wanted to go show
24 what was happening, and I just livestreamed it.

25 Q. So when you first started livestreaming, it was under Eric

Greatwood - X

1 Greatwood?

2 A. Yes.

3 Q. And you've got this 20-foot tall painter's pole?

4 A. Yes.

5 Q. And a sign that, at that time, said "Veterans For Peace"
6 or "Veteran For Peace"?

7 A. "Veteran For Peace."

8 Q. Did you ever talk to officers about being a veteran?

9 A. At the protest?

10 Q. Yeah. Did that, like, prompt a discussion, like, "Cool,
11 you're a veteran. Let's," you know --

12 A. No. Police didn't approach me and ask me questions or
13 anything. I did approach some police and ask them just
14 general questions on procedure. That's as far as it went.

15 Other than that, my interaction with police was at
16 the end of the night, they would typically find out where I
17 ended my streams, because they know where I am. They watch my
18 streams.

19 And they would, you know, come say, "Hey, I'm
20 watching you on the stream" or "Hey, hi. How are you doing?"
21 So I was like, okay, "Hi" back, you know, and some of them in
22 a more or less intimidating kind of manner -- mannerism. But
23 some of them, I would say were like -- I don't know -- saying
24 "Hi" because they saw me on TV or something. I don't know.

25 Q. Right.

Greatwood - X

1 I think you said you like to position yourself
2 between the police line and the protesters.

3 A. Yes.

4 Q. And is it fair to say that you're trying to capture
5 objective images of a protest?

6 A. That's the whole goal I have, is to be as objective as
7 possible.

8 Q. And do you narrate your livestreams?

9 A. Initially I did not, because my camera was so high up, you
10 couldn't hear me speak. And then eventually I got a
11 microphone later.

12 And all I did was also -- I would just state what was
13 happening, more or less like a commentator, you know, "Hey,
14 this is happening now. This is happening now." I would say
15 what was happening on either the protest's or the police's
16 side.

17 Q. Okay. So that doesn't surprise that you were that
18 surprised that some officers knew that you were livestreaming
19 and had watched your livestreams; is that right?

20 A. I mean, I was aware -- I don't know if it was by the 30th
21 that I was fully aware of that, I think. Because I ended up
22 filming about 60 days, and then I stopped.

23 Q. So I want to ask you, you started filming, I think you
24 said, around June 5th; is that right?

25 A. Correct.

Greatwood - X

1 Q. And then had attended most nights. I think you said 25
2 times or something at that point or --

3 A. Yes.

4 Q. -- 20 to 25.

5 Had you been targeted by the police prior to
6 June 30th for filming?

7 A. I don't recall. And if it did, it would have been minor.

8 Q. Okay. Well, what do you mean by "minor" targeting?

9 A. I'm trying to remember. I mean, being -- I mean, being
10 pushed. I don't know if that was being targeted. I know -- I
11 know I was pushed in some bushes in July. I was also -- and
12 then I was -- I'm sorry. I can't recall.

13 Q. Okay. And in your declaration -- let's see if I can find
14 it. It's in paragraph 16. You said, "I believe that the
15 police personally targeted me and intentionally aimed to shoot
16 me in the groin area."

17 A. I do believe that.

18 Q. And I guess what my question for you is: Well, if you had
19 been doing this for 20 to 25 nights before, why wouldn't they
20 have targeted you earlier?

21 A. That's up to the police. I mean, I believe that each
22 individual has their own mentality of what I'm actually doing.
23 So it's a case-by-case basis.

24 Q. Okay. Let me just go over my notes real quick. I could
25 be close to being done.

Greatwood - X

1 So you said that you -- you saw this deployment of a
2 metal canister that typically breaks up into three smaller
3 cans. I've heard it described as tuna-sized cans that
4 are -- three tuna cans that are stacked on each other that
5 separate. Is that true?

6 A. Similar. Thinner than a tuna can, but yes, that relative
7 shape, three of them.

8 Q. Okay. And it's your understanding that -- you think that
9 this -- which Mr. Bruggemeier, he termed it a "Triple-Chaser,"
10 which you hadn't heard that term before. You bent down to
11 examine it --

12 A. Uh-huh.

13 Q. -- because you hadn't seen one up close.

14 Could you tell that it was three canisters that
15 hadn't separated, or was it possibly just one canister
16 that hadn't --

17 A. Well, I have it now. But --

18 Q. Wait a minute. You have the canister now?

19 A. Yeah. So another person that was attending picked it up
20 in front of me, while I was groaning. I couldn't -- I was in
21 a lot of pain. They started to walk off with it, so I asked
22 them for it, because I was like, "I kind of just had that
23 happen. Do you mind if I keep that, for memory's sake" or
24 whatever.

25 Q. Okay.

Greatwood - X

1 A. So, yeah, it has three sections in it. I couldn't
2 analyze, when they threw it, what it was.

3 Q. Did you observe people throwing objects at the police
4 before you were shot by the impact round?

5 A. I noticed a couple water bottles; in what condition, I
6 don't know. I saw them spraying water, but just literally
7 maybe two.

8 Q. You just saw two water bottles being thrown?

9 A. Maybe, maybe two.

10 Q. You didn't see rocks?

11 A. No.

12 Q. Cans?

13 A. No.

14 Q. Bottles?

15 A. No.

16 Q. You said that somebody picked up the Triple-Chaser after
17 you were shot?

18 A. Uh-huh.

19 Q. Do you -- I think you testified you had the camera pole in
20 your left hand, you slowly bent down because there was, like,
21 cables connecting your camera or something?

22 A. Yes.

23 Q. So you were reaching with your right to pick up the
24 Triple-Chaser canister?

25 A. Yeah, I must have -- I usually -- at that night, I had my

Greatwood - X

1 pole in my left hand and my phone in my right hand, which
2 allowed me to see what the camera was seeing. And so I must
3 have put my phone in my pocket and went to lunge to get it
4 very slowly, because my rig is super tight. It was -- it's
5 MacGyver'd, so it's not a professional rig or anything. Yeah,
6 I went to --

7 Q. When you say -- to me, when you say "lunge" and "slowly
8 bend," those are two different things.

9 A. Okay. It's in between a lunge and a bend, because I have
10 a 20-foot pole, so it's a very awkward way to get down, like,
11 to pick something off the ground, I promise.

12 Q. So was it like a quick movement to pick it up or a slow
13 movement?

14 A. I only could have moved in a slow movement. I had too
15 much heavy stuff on me.

16 Q. And did you actually touch the object, the Triple-Chaser
17 canister, or did you never get to touch it?

18 A. I didn't get to touch it before I was hit. I only have it
19 because somebody else picked it up.

20 MR. YAMACHIKA: No further questions. Thank you.

21 THE COURT: Redirect.

22 MR. BRUGGEMEIER: Thank you, Your Honor.
23
24
25

Greatwood - ReD

REDIRECT EXAMINATION

BY MR. BRUGGEMEIER:

Q. Mr. Greatwood, how far away do you think you were from the police line when you were shot?

A. About 20 feet, I estimate.

Q. Okay. And you believe police shot you?

A. I believe so.

Q. And you believe that they intended to shoot you in the groin?

A. I do, for the reason that I -- just the accuracy of the hit. And I just -- I know that other people have gotten hit in the groin. And so, to me, that just seems pretty intentional.

Q. Fair enough.

Thank you, Mr. Greatwood.

MR. BRUGGEMEIER: No further questions, Your Honor.

THE COURT: Thank you.

If you wouldn't mind kind of wiping the area off where you've been and the chair that you've sat in.

THE WITNESS: What would you like me to do with --

THE COURT: Just leave that there. We'll take care of that.

Actually, you can set that here on my side of the bench here.

Just get everything wiped down, and take the booty

1 off the microphone and throw that away.

2 THE WITNESS: (Complies.)

3 THE COURT: I think there's a trash can somewhere
4 down there.

5 Do you want this witness to be excused?

6 MR. BRUGGEMEIER: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. YAMACHIKA: No objection.

9 THE COURT: You are excused to go about your
10 business. Thank you very much.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: It is 5:00. So we -- or I had planned to
13 stop around this time.

14 How many more witnesses do the plaintiffs have?

15 MR. MEGGITT: One more.

16 THE COURT: One more.

17 And how many witnesses is the City going to be
18 calling?

19 MR. MOEDE: Three, Your Honor.

20 THE COURT: So we should be able to finish perhaps
21 midday tomorrow as far as the witnesses go.

22 MR. MOEDE: I would think so, Your Honor.

23 THE COURT: Okay. All right.

24 By the way, plaintiffs' counsel, you may want to
25 contact Mr. Greatwood. I'm a little nervous that somebody has

1 a -- whatever you call that thing in their possession. And I
2 would hate to see somebody lose a finger because it explodes
3 inadvertently.

4 MR. BRUGGEMEIER: I've had many conversations with
5 people about that, Your Honor. They will not listen to me.

6 THE COURT: To the extent that they can get it
7 photographed and copied and then returned to somebody who
8 knows how to dispose of all of that, that's probably a good
9 idea.

10 In any event, let's get back together tomorrow
11 morning at 9:00.

12 That's all for now. We're in recess.

13 (The proceedings are adjourned on October 21, 2020
14 and reconvened on October 22, 2020.)
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

12-16-20

NANCY M. WALKER, CSR, RMR, CRR
Official Court Reporter
Oregon CSR No. 90-0091

DATE

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